

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C.) No. 12326/2009**

% **Date of Decision: 12th October, 2009**

SHRI AITA RAM PETITIONER

Through: Mr. Ashwin Vaish and Mr. Vinod Kumar
Pandey, Advocates.

VERSUS

\$ HINDUSTAN TIMES LTD & ANOTHER RESPONDENTS

Through: Mr. Sandeep Mittal and Mr. Ajit Upadhyaya,
Advocates for respondent No. 1.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

This writ petition is filed by the workmen against M/s Hindustan Times Limited in terms of liberty granted to the parties vide order dated 16.01.2009 in W.P.(C.) No. 2247/2007 to move this Court in case any of them delay the proceedings pending before the Industrial Tribunal.

2. This writ petition is taken up for final disposal at admission stage itself because Mr. Sandeep Mittal is present on behalf of the respondent No. 1 and counsel on both sides have agreed that the writ petition may be disposed of at this stage itself to avoid further delay in the disposal of reference pending before the Industrial Tribunal.

3. There are 272 workmen who were terminated by the respondent No. 1 from its service. They all were terminated on the same date after affixing notice on the Notice Board on 03.10.2004. Individual letters of

termination are stated to have also been sent to each of the 272 workmen. Mr. Sandeep Mittal, learned counsel appearing on behalf of the respondent No. 1, says that termination of all the 272 workmen was under Section 25 FF of the Industrial Disputes Act, 1947.

4. This Court in deciding the present writ petition is not going into the legality of the termination of the workmen because the said question is pending adjudication in reference proceedings pending before the Industrial Tribunal.

5. The management of respondent No. 1 had earlier filed a writ petition being W.P.(C.) No. 2247/2007 which was disposed of finally vide consent order dated 16.01.2009. In that writ petition, both sides had agreed that they will not cause any delay in the disposal of the reference pending before the Tribunal and on such an assurance given by them, directions were given by this Court to the Tribunal vide its order dated 16.01.2009 to make all possible endeavour to dispose of the matter within a period of six months and in any case, not beyond one year. The said directions were given on 16.01.2009. Now, 9 months have passed but there does not seem to be any headway in the disposal of the reference. The case before the Tribunal is stated to be struck up at the stage of cross-examination of the first witness of the workmen namely WW-1 Mr. Suryamani Mishra. The case is stated to be now fixed before the Tribunal for remaining cross-examination of WW-1 Mr. Suryamani Mishra on 16.10.2009, 23.10.2009 and 24.10.2009. The workmen are stated to have filed 281 affidavits in their evidence in chief. Since directions were given by this Court to the Tribunal to dispose of the reference maximum within one year to be reckoned from 16.01.2009, the Court asked the counsel for the parties that if 281 affidavits have been filed in evidence in chief, then how the case before the Tribunal can be

completed within time, i.e., by the end of January 2010 in terms of directions of the Court contained in its order dated 16.01.2009 in W.P.(C.) No. 2247/2007. The Court also asked the counsel for the parties to give a schedule of the number of witnesses they actually intend to examine in support of their rival contentions in proceedings pending before the Tribunal, if they are really interested in expeditious disposal of the reference.

6. At this stage, Mr. Ashwin Vaish, learned counsel appearing on behalf of the petitioner, on instructions from all the 272 workmen says that since the claim of all these workmen is identical, he will examine only one witness who is already under cross-examination namely WW-1 Mr. Suryamani Mishra, which should be treated as evidence on behalf of all the 272 workmen. It is further submitted by Mr. Vaish that in case, the workmen succeeds in proving the reference in their favour and if the question arise for their reinstatement and back wages, then because only one witness is going to be examined on behalf of the 272 workmen, the management should not be permitted to plead that these 272 workmen were gainfully employed unless the particulars of gainful employment are specifically proved by management before the Tribunal and in that event, opportunity should be given to the workmen to lead their evidence in rebuttal on the point of gainful employment.

7. Mr. Sandeep Mittal, learned counsel appearing on behalf of the respondent No. 1, says that he will examine only two witnesses on behalf of the respondent No. 1 before the Tribunal. Their evidence in chief should be filed by respondent No. 1 by affidavit within two weeks from today with a further liberty granted to the respondent No. 1 to file additional affidavit of these two witnesses, if required, within a week's time of closure of cross-examination of the workmen's witness WW-1 Mr.

Suryamani Mishra. Needless to say that advance copy of affidavits/additional affidavits of the two witnesses to be filed on behalf of the management of respondent No. 1 should be furnished to the counsel for the workmen immediately on their being filed before the Tribunal. Counsel on both sides have assured the Court that they will not move any miscellaneous application of any kind before the Tribunal and if need be, they will approach this Court for any further directions or clarifications in the matter and this assurance has been given by the counsel on both sides so that they may not be blamed tomorrow that either of them is guilty of causing delay in the proceedings before the Tribunal. Any miscellaneous application of either of the parties pending before the Tribunal in the reference proceedings shall not be pressed and are deemed to have been withdrawn by the parties. This direction has been given to facilitate the expeditious disposal of the reference pending before the Tribunal.

8. The three dates are now stated to be fixed before the Tribunal and they are 16.10.2009, 23.10.2009 and 24.10.2009. These dates are fixed for remaining cross-examination of WW-1 Mr. Suryamani Mishra. The counsel for the management should conclude the cross-examination of WW-1 on these three dates spending maximum of one hour on each such date.

9. At this stage, Mr. Ajit Upadhyaya, present in person along with Mr. Sandeep Mittal for the Management, says that he should be given six hours more for concluding the remaining cross-examination of WW-1 Mr. Suryamani Mishra. Mr. Vaish submits that WW-1 has already been cross-examined by management for one hour on 19.09.2009. Mr. Upadhyaya is the counsel for the management before the Tribunal. Mr. Upadhyaya says that time is taken for recording of cross-examination of the

workmen's witness because of repeated objections taken by the counsel for the workmen. Mr. Vaish, learned counsel appearing on behalf of the workmen submits that since WW-1 Mr. Suryamani Mishra knows only Hindi and when translation of his deposition is done, the entire sense is changed and for that reason, he has to object to the recording of such a version. In order to obviate the apprehension of the counsel for the parties on this aspect of the matter, the Tribunal is directed to record the remaining cross-examination of WW-1 under its own direction, supervision and dictation and the counsel for the petitioner has been asked not to raise unnecessary objection before the Presiding Officer of the Industrial Tribunal. Answers to the questions being put in the cross-examination of WW-1 be recorded so that the entire script of testimony would be before the Court and objection to any particular portion of the evidence that may be given in the cross-examination may be taken by the parties during arguments. This course has been adopted to avoid technicalities and delay in recording of the cross-examination of the witness. Mr. Upadhyaya, learned counsel appearing on behalf of the management before the Tribunal, has been requested that he should confine his cross-examination of WW-1 only for an hour on each of the three dates and should conclude his cross-examination on dates already fixed before the Tribunal for recording of his remaining cross-examination.

10. Mr. Vaish, learned counsel appearing on behalf of the workmen says that he will take two hours for cross-examination of each of the two witnesses intended to be examined by respondent No. 1 management. The Tribunal will fix dates for cross-examination of the management's witnesses as per its calendar giving priority to the present case keeping in mind that there are 272 workmen who have challenged their

termination in a reference pending before it. The Tribunal below should make an endeavour to dispose of the reference as expeditiously as possible preferably within next nine months time to be reckoned from 16.10.2009.

11. Mr. Vaish, learned counsel appearing on behalf of the 272 workmen, says that the remaining affidavits filed in evidence in chief of the workmen should be treated as withdrawn as they all will rely on evidence of WW-1 Mr. Suryamani Mishra subject to their right of rebuttal evidence on the point of gainful employment.

This writ petition is disposed of in terms referred above.

A copy of this order be sent to the Tribunal below for compliance.

OCTOBER 12, 2009
'BSR'

S.N.AGGARWAL, J