

GAHC010218782022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No.: WP(C)/2211/2022

THE MANAGEMENT OF DAINIK JUGASANKHA
13

GREEN PATH

G.S. ROAD

GUWAHATI-7

DIST.- KAMRUP(M)

REPRESENTED BY ITS DIRECTOR NAMELY SRI GAURAV NATH.

VERSUS

FAZLUZZAMAN MAZUMDER AND ANR

S/O- LATE IDRIS ALI MAZUMDER

P.O. DISPUR

P.S. DISPUR

DIST.- KAMRUP(M)

PIN- 781006 ASSAM

2:THE PRESIDING OFFICER

LEARNED LABOUR COURT

GUWAHATI-781001.

Advocate for the petitioner : Mr. J. I. Borbhuiya, Advocate.

Advocate for the Respondents : Mr. F. Z. Mazumder,
respondent-in-person.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 07.02.2023

Date of Judgment : 07.02.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. J. I. Borbhuiya, the learned counsel for the petitioner and Mr. F. Z. Mazumder, the learned respondent-in-person.

2. The presence of the respondent No.2 is not essential for disposal of the instant case and as such, the name of the respondent No.2 is struck off.

3. The instant writ petition has been filed assailing the order dated 15.02.2019 passed in Case No.16/2018 by the Presiding Officer of the Labour Court, Guwahati. For ascertaining the dispute involved in the instant proceedings, it would be relevant to take note of that the respondent herein claimed that he was appointed as a Sub-Editor by the daily newspaper "Dainik Jagasankha" in the year 2005. Thereupon in the year 2012, he was promoted as the Staff Reporter. However, on 27.05.2015, the Management of the Daily Newspaper "Dainik Jagasankha" on 26.05.2015 terminated the services of the respondent. The respondent thereupon approached the Labour Commissioner and submitted a written complaint on 13.06.2016 seeking entitlement for his lawful dues. The Labour Commissioner requested the Assistant Labour Commissioner on the basis of the said complaint filed by the respondent to enquire into the matter at the earliest and to take necessary action for recovery of the arrear wages and other dues. Thereupon, the respondent pursued the matter with the Assistant Labour Commissioner from time and again and ultimately on 01.02.2017, a notice was issued to the petitioner herein to submit written comments within 7 (seven) days. However, the petitioner did not reply to the said notice. Thereupon the Assistant Labour Commissioner fixed for a joint enquiry-cum-discussion on 17.03.2017 and also asked the Executive Director of the petitioner to attend the same with written comments. However, the Executive Director of the petitioner did not attend. Situated thus, on

31.03.2017, the Assistant Labour Commissioner informed the Executive Director of the petitioner by sending another notice directing the Management of the petitioner to respond to the said Office. In the said notice, it was also mentioned that a joint enquiry-cum-discussion would be held on 24.06.2017. However, the Management of the petitioner did not attend the joint discussion. Subsequent thereto, the respondent herein on 20.06.2017, submitted an amendment petition wherein the respondent amended his claims to his original complaint petition dated 23.06.2016. On the basis of the said amendment petition so filed, the Assistant Labour Commissioner again issued another notice to the Executive Director of the petitioner to attend or depute an authorized representative along with written comments on the issue to be discussed in the meeting to be held on 20.01.2018. However, the Management of the petitioner did not care to reply to the same or even attended the Office of the Assistant Labour Commissioner. Under such circumstances, the respondent herein approached this Court by filing a writ petition which was registered and numbered as WP(C) No.2655/2018. A perusal of the order passed on 04.06.2018 passed in WP(C) No.2655/2018 shows that there was a consensus arrived at between the parties on the basis of which the said writ petition was disposed of by providing that the petitioner herein along with the respondent would appear before the Assistant Labour Commissioner, Ulubari, Assam on 20.06.2018 and thereafter would appear on each subsequent date(s) to be fixed by the Assistant Labour Commissioner, Ulubari, Assam in connection with the proceedings drawn up for settlement of the respondent's dues as per his entitlement under law. Accordingly, on the basis of the said order, both the petitioner herein as well as the respondent appeared before the Assistant Labour Commissioner on the date so fixed by this Court but the petitioner

herein denied to compensate the workman. It is under such circumstances that the respondent herein filed an application under Section 2A read with Section 25(ZA) of the Industrial Disputes Act, 1947 before the Labour Court, Assam, Guwahati seeking various directions which are stated herein under:-

- (i) To direct the management to release the dues to the workman including arrear, gratuity and earned leave as per the Mazithia Wage Board's recommendation;
- (ii) To direct the management to release the wages for compensatory holidays, holidays and weekly day of rest which the workman is entitled to as per the provision of Working Journalists And Other Newspaper Employees (Conditions Of Service) and Miscellaneous Provisions Act, 1955 (for short, the Act of 1955);
- (iii) To grant compensation for illegal termination including retirement benefit; and
- (iv) To grant any other relief(s) as to which the Tribunal deems fit and proper.

4. It further appears that that the said proceedings proceeded ex-parte against the petitioner herein as the petitioner herein did not participate in the said proceedings despite the receipt of the notice as has been recorded in the order dated 13.12.2018 by the learned Labour Court. It further appears that the learned Labour Court vide an award dated 15.02.2019 directed the petitioner herein to pay full back wages including retirement benefits within 3 (three) months from the date of the award.

5. Being aggrieved, the petitioner is before this Court by filing the instant writ petition. At this stage, it is also relevant to take note of that on the basis of the

award so passed on 15.02.2019, the respondent herein have initiated a proceedings for execution before the Court of the Civil Judge No.1, Kamrup (M) at Guwahati which was registered and numbered as Money Execution Case No.10/2020. The learned Executing Court, on the basis of the details so furnished by the respondent, assessed the entitlement of the respondent on the basis of the award dated 15.02.2019 to be an amount of Rs.66,51,635/-. On the basis thereof, some of the properties of the petitioner herein attached.

6. Upon the instant writ petition being filed, this Court vide an order dated 11.05.2022 issued notice, returnable by four weeks and in the interim, the award dated 15.02.2019 passed in Case No.16/2018 was suspended subject to the condition that the petitioner shall deposit an amount of Rs.3,00,000/- in the Registry of this Court within a period of one month from the date of the said order. It is further mentioned that the disbursal of the said amount to be deposited by the petitioner would be subject to the final decision made in the case.

7. Mr. J. I. Borbhuiya, the learned counsel for the petitioner submitted that in terms with the said order, the amount of Rs.3,00,000/- has already been deposited before the Registry of this Court. It further appears on record that the respondent herein has filed an application for modification of the order dated 11.05.2022 and to permit the respondent to withdraw the amount of cost which is submitted before the Registry of this Court. It is also relevant to take note of that another application has been filed by the petitioner whereby there is a prayer for striking off the name of the respondent No.2 which this Court has already done as already mentioned herein above and to add the Commissioner & Secretary to the Government of Assam, Labour and Welfare Department, Dispur, Guwahati-6 as the respondent No.2 to the instant proceedings. The said

application was registered and numbered as I.A.(C) No.3823/2022.

8. Before further proceeding on the dispute in hand, this Court first would like to take into consideration the I.A.(C) No.3823/2022. This Court has made a specific query upon the learned counsel for the petitioner as to why the presence of the Commissioner & Secretary to the Government of Assam, Labour and Welfare Department is necessary for the purpose of the instant dispute taking into consideration that the challenge made in the instant proceedings is only a challenge pertaining to an award passed by the Labour Court and more so when the proceedings is a dispute primarily between the petitioner and the respondent in question. The learned counsel for the petitioner submitted that he would not like to press the said application. Accordingly the said I.A.(C) No.3823/2022 stands disposed of.

9. Now coming to the question involved in the instant proceedings, i.e. whether any interference is called for to the award dated 15.02.2019 under Article 226 of the Constitution, this Court has perused the award dated 15.02.2019. It appears from the said award that the learned Labour Court did not at all take into consideration the relevant factors which are necessary for the purpose of deciding the application so filed by the respondent herein before the learned Labour Court. The non-application of mind can be seen from the facts that the learned Labour Court has applied Section 25ZA of the Industrial Disputes Act, 1947 although the said provision is a State Amendment applicable only to the State of Gujarat. Thereafter, the learned Labour Court took note of the Wage Board so constituted by the Government of India and the fact that the Supreme Court had upheld the recommendations so made by the Majithia Committee but without any discussion whatsoever as to what amount the respondent would be entitled to or on what basis he would be entitled to had

purportedly passed the award directing the petitioner to pay full back wages including the retirement benefits from the date of dismissal within three months from the date of the award. The learned Labour Court also did not take into consideration how the report of the Majithia Committee would benefit the respondent who was the applicant therein. The learned Labour Court even did not take the pain to mention during which period the said wages are to be paid and what retirement benefits are also required to be paid. The learned Labour Court also did not discuss as to whether the termination order which has been assailed by the respondent in the said proceedings is legal or illegal.

10. Taking into account the manner in which the learned Labour Court had applied its mind and have passed the Impugned Award, this Court has no other option but to hold that the Impugned Award dated 15.02.2019 suffers from perversity, and accordingly, the same is interfered with.

11. However, the respondent on account of the fault of the learned Labour Court cannot be left without a remedy and there is a necessity for adjudication of the dispute so raised before the learned Labour Court as to whether the respondent is entitled to the claims as have been made in his application.

12. From a perusal of the proceedings of the learned Labour Court in case No.16/2018 it also appears that the said proceedings had proceeded ex-parte against the petitioner. On perusal of the order dated 13.12.2018 shows that the learned Labour Court has proceeded ex-parte against the petitioner herein on the ground that despite receiving the notice, they did not turn up. The learned counsel appearing on behalf of the petitioner submitted that the fact that the notice was served in the establishment of the petitioner is not denied. However, it was on account of the notice not being brought to the attention of the Management of the petitioner, the petitioner had no knowledge of the initiation

of the proceedings for which the petitioner did not participate in the said proceedings. He submitted that the notice was served upon a receptionist who in turn had handed it over to one Director, namely, Nilutpal Choudhury (since deceased), who had in the meantime expired and he did not place the notice before the Management of the petitioner and as such the Management of the petitioner had no notice about the instant proceedings. He, therefore, submitted that the petitioner herein may be permitted to contest and file written statement in the said proceedings on merit.

13. The writ petition therefore stands disposed with the following directions and observations:-

(i) Taking into consideration that the award dated 15.02.2019 suffers from perversity for the reason above mentioned, the said award dated 15.02.2019 is set aside and quashed.

(ii). Further, as the petitioner's entitlement to the claims made in his application is required to be adjudicated, this Court therefore directs the Presiding Officer of the Labour Court, Guwahati to decide afresh the said proceedings. In doing so, the Presiding Officer of the Labour Court, Guwahati shall permit the petitioner herein which is the Management of the Daily Newspaper "Dainik Jagasankha" to file their written statement.

(iii) Upon filing of the said written statement, the respondent herein who is the applicant in the said proceedings is given the liberty to adduce further evidence apart from the evidence which has already been tendered. The petitioner would also be at liberty to adduce evidence as well as cross-examine the applicant.

(iv) The learned Presiding Officer of the Labour Court, Guwahati shall

thereupon decide the said dispute within a period of 6 (six) months from the date of appearance of the parties before the learned Labour Court which this Court fixes on **17.03.2023**.

(v) The Registry of this Court is directed to forthwith send the records back to the learned Labour Court so that the learned Labour Court is in a position to take up the matter on 17.03.2023.

(vi) The petitioner herein, i.e. the Management of the Daily Newspaper "Dainik Jagasankha" is further directed to file its written statement on 17.03.2023 without fail.

(vii) Taking into account that the petitioner herein has already deposited Rs.3,00,000/- before the Registry of this Court, this Court directs the Registry to release Rs.1,00,000/- (Rupees One lakh) only to the respondent herein, i.e. Mr. F. Z. Mazumder, the learned respondent-in-person on an application being filed along with a certified copy of this order. The remaining amount of Rs.2,00,000/- be refunded to the petitioner on an application being filed along with the certified copy of the instant order.

(viii) It is further directed that taking into account that the award dated 15.02.2019 has been set aside, the proceedings in Money Execution Case No.10/2020 also becomes infructuous and accordingly interfered with.

JUDGE

Comparing Assistant