

Court No. - 5

Case :- WRIT - C No. - 39505 of 2023

Petitioner :- M/S Jagran Prakashan Limited

Respondent :- Shri Krishna Mohan Trivedi And 3 Others

Counsel for Petitioner :- Chandra Bhan Gupta

Counsel for Respondent :- C.S.C.,Man Mohan Singh

With

Connected Writ C Nos. (1) 39506 of 2023, **(2)**39508 of 2023, **(3)** 39510 of 2023, **(4)**39514 of 2023, **(5)** 39516 of 2023, **(6)**39517 of 2023, **(7)**39518 of 2023 , **(8)**39521 of 2023,**(9)** 39522 of 2023, **(10)**39523 of 2023, **(11)**39524 of 2023, **(12)**39525 of 2023, **(13)**39526 of 2023, **(14)** 39528 of 2023, **(15)**39530 of 2023, **(16)**39532 of 2023, **(17)** 39537 of 2023, **(18)**39541 of 2023, **(19)** 39542 of 2023, **(20)**39543 of 2023, **(21)**39544 of 2023, **(22)**39545 of 2023, **(23)**39546 of 2023, **(24)**39547 of 2023, **(25)**39551 of 2023, **(26)**39553 of 2023, **(27)**39554 of 2023, **(28)**39555 of 2023, **(29)**39556 of 2023, **(30)** 39557 of 2023, **(31)** 39558 of 2023, **(32)**39559 of 2023, **(33)**39560 of 2023, **(34)**39561 of 2023, **(35)**39562 of 2023, **(36)**39563 of 2023, **(37)**39564 of 2023, **(38)**39565 of 2023, **(39)** 39567 of 2023, **(40)**39570 of 2023, **(41)**39573 of 2023, **(42)**39576 of 2023,**(43)** 39580 of 2023, **(44)**39581 of 2023, **(45)**39582 of 2023, **(46)**39583 of 2023, **(47)** 39584 of 2023, **(48)**39585 of 2023, **(49)**39587 of 2023, **(50)** 39588 of 2023, **(51)**39589 of 2023, **(52)**39590 of 2023, **(53)**39591 of 2023, **(54)**39592 of 2023, **(55)**39593 of 2023, **(56)**39594 of 2023, **(57)**39595 of 2023, **(58)**39596 of 2023,**(59)** 39597 of 2023, **(60)** 39599 of 2023.

Hon'ble Piyush Agrawal, J.

1. Heard Mr. Sanjay Kaushal, learned Senior Counsel assisted by Mr. Chandra Bhan Gupta for the petitioner and Mr. Man Mohan Singh for the respondents.

2. The issue involved in all the writ petitions is identical as such the writ petitions are being decided by a common order treating Writ C No. 39505 of 2023 as leading case.

3. By means of present petitions, the petitioner is seeking a relief to quash the entire proceedings of reference cases pending before respondent no. 3.

4. Learned counsel for the petitioner has submitted that respondents herein are not Journalist however they are working with the petitioner-institution on different posts and their services are governed by the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (herein after referred to as 'the Act of 1955'), which is a Central Act / special Act and is applicable upon newspaper establishment. He submitted that respondents were well aware about the said fact, therefore, they moved applications wherein it has been referred that in terms of Section 16 of UP Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1956 as well as under Section 2 A of Industrial Disputes Act, 1947, they seek intervention of the authorities for the relief against alleged illegal termination. He further submitted that in pursuance of that respondents themselves have made a request under the Industrial Disputes Act i.e. Central Act and not upon the UP Industrial Dispute Act for making a reference under Section 10 (2) of the Industrial Disputes Act. He further submitted that on the identical set of facts, various references have been made under Section 10 (2) of Industrial Disputes Act, copies of which have been filed along with the writ petitions. He further submitted that since the references under Section 4 K of UP Industrial Disputes Act is not applicable, therefore, the present references are bad and once the references are bad, the entire proceedings pending before the Labour Court is vitiated.

5. In support of his claim, learned counsel for the petitioner has submitted that on an identical set of fact a bunch of writ petitions leading case number Writ C No. 27117 of 2023 have been entertained by this Court in which interim order dated 28.8.2023 was granted in favour of the petitioner.

6. *Per contra*, learned counsel for the respondents-employees submitted that references are in accordance with law. In support of his contention, he relied upon the judgement of this Court passed in **Writ C No. 37024 of 2012 (Ms/ Jagran Prakashan Limited and another Vs. State of Presiding Officer**

Labour Court and others) decided on 4.8.2020 and submitted that the references have been filed in accordance with law. He further submitted that similar arguments were raised by the petitioner therein before this Court in the aforesaid writ petition, which has been turned down by this Court in para no. 38 of the judgement. He further submitted that at this stage, the petitioner has no *locus standi* to challenge reference order and same could only be challenged after passing the award, if the petitioner will be aggrieved. He further relied upon the judgment of Delhi High Court in the case of **M/s Hongkong and Shanghai Banking Corporation Ltd. Vs. Government of India and another, Writ Petition (Civil) No. 12602 of 2006**, decided on 24.9.2008. He further submitted that at the time of making reference, the order does not effect the right of the parties. He prays for dismissal of this writ petition.

7. After hearing learned counsel for the parties, the Court has perused the records.

8. It is admitted that references under Section 4 K of UP Industrial Dispute Act have been made for referring the dispute by respondent no. 4. It is also admitted between the parties that the respondents in the present bunch of writ petitions are not Journalist but were other employees of the petitioner. The issue involved in the present bunch of writ petitions is as to whether State Government is competent to refer the matter under Section 4 K of UP Industrial Dispute Act or under Section 10 (2) of the Industrial Disputes Act (Central).

9. On two occasions inter parties, this Court has held that other than the Journalists as prescribed under the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 Act, the State Government is competent to refer the dispute under Section 4 K of UP Industrial Disputes Act. The first judgement of this Court between inter parties was passed in the case of **Jagran Prakashan Limited Vs. Presiding Officer, Labour Court, reported in 2020 (167) FLR (412)** where the question of law has been framed in para 16(i) and thereafter discussions have been made in para 25, 26 and 27 and thereafter conclusion has been drawn in

para 38. The aforesaid paras which are referred herein above are extracted as under:-

“16. This Court finds that on the submissions of parties advanced, the following two questions arise for consideration:

(1) Whether a junior plate maker employed with a newspaper establishment is a workman by virtue of the Working Journalists Act alone, and exclusively governed by the provisions of the Central Act so as to render a reference under Section 4-K of the State Act in his case incompetent? If so, is the Labour Court/ Industrial Tribunal constituted under the Central Act, alone competent to answer a reference in relation to such a workman?

..

25. A conjoint reading of the aforesaid provisions together with the preamble of the Act shows that it is statute brought "to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments', to borrow the precise phraseology of the preamble. The Working Journalists Act is, thus, by no means a wholesome or a complete legislation, governing or regulating the entire gamut of service conditions of working journalists and other newspaper employees. Section 3 of the Act, under reference, clearly shows that to working journalists, who are otherwise not workmen within the meaning of the Central Act, the provisions of the Central Act have been extended by virtue of sub-Section (1) of Section 3 in the same manner as they apply to workman, subject to modifications, detailed in sub-Section (2) of Section 3. The effect of Section 3 is that working journalists, as defined under the Working Journalists Act, who are not otherwise workmen, would be treated to be so and extended all benefits available to workmen under the Central Act, subject to modifications provided under sub-Section (2) of Section 3.

26. It must be remarked that so far as working journalists are concerned, it is not the intendment of Section 3 on a plain reading of the statute or any construction of its terms that in their case, the Appropriate Government, under the Central Act, would be the Central Government alone. Section 3 of the Working Journalists Act extends application of the provisions of the Central Act to working journalists as they occur in the latter statute, subject to the modifications envisaged under sub-Section (2) of Section 3 of the Working Journalists Act. Now, under the Central Act, it is not in every case that the Appropriate Government, in relation to workmen governed by that Act, is the Central Government alone. Rather, a reading of the definition of the "Appropriate Government', under Section 2(a)(i) and (ii) would show that under sub-clause (i) of Clause (a) of Section 2, there are enumerated specific categories or named employers in relation to whose workmen, the Appropriate Government would be the Central Government. Sub-Clause (ii) of Clause (a) of Section 2 shows it to be a residual clause, which says

that in relation to any other industrial dispute, the State Government would be the Appropriate Government. A newspaper establishment as defined under Section 2(d) of the Working Journalists Act or by way of any other reference, does not find mention in sub-clause (i) of Clause (a) of Section 2 of the Central Act. Thus, a newspaper establishment would clearly fall under sub-Clause (ii) of Clause (a) of Section 2, making the Appropriate Government, in relation to a newspaper establishment, the State Government.

27. It is not the employers' case that they are a Company in which not less than 51% of the paid-up share capital is held by the Central Government or a subsidiary company set up by a Principal Undertaking or Autonomous Body owned and controlled by the Central Government. Thus, the case of the employers would clearly be governed by sub-Clause (ii) of Clause (a) of Section 2 of the Central Act, where in relation to a working journalist employed with them, the State Government would be the Appropriate Government under the Central Act. It is, therefore, a fallacious proposition for the employers to urge that since working journalists are treated to be workmen under the Central Act by virtue of Section 3 of the Working Journalists Act, the Appropriate Government in case of working journalists employed with them, would be the Central Government. In the opinion of this Court, it would be the State Government under the Central Act.

..

38. The workman in this case is, therefore, a workman, both under the Central Act and the State Act as he satisfies the definition of a workman under both the statutes, independent of the provisions of the Working Journalists Act. The employers here being not an industry carried on by or under the authority of the Central Government or one who fall under any of the specified categories or named establishment, authorities or bodies, mentioned under Section 2(a)(i) of the Central Act, the Appropriate Government would be the State Government in accordance of the provisions of Section 2(a) (ii) of the Act, last mentioned. Accordingly, reference of the dispute under Section 4-K of the State Act is valid and competent. Since the reference under Section 4-K of the State Act is competent, the further question, "Whether the Labour Court/ Industrial Tribunal constituted under the Central Act alone is competent to answer a reference in relation to the workman?" is not required to be answered."

10. Further in another bunch of writ petition leading Writ C No. 23241 of 2016 (M/s Bureau Chief Rastriya Sahara and another Vs. Labour Commissioner UP and others) in which the petitioner is also one of the petitioner in Writ C No. 22872 of 2016, decided on 3.4.2023, this Court has

held as under:-

24. Since all the aforesaid writ petitions were heard together, in one of the matters reliance was placed on behalf of the respondent-workman on a judgment of this Court in the case of **M/s Jagran Prakashan Ltd. and another Vs. Presiding Officer, Labour Court, U.P., Allahabad and others: 2020 (167) FLR 412**), with special reference to paragraph 38 thereof, which is quoted herein below:-

"38. The workman in this case is, therefore, a workman, both under the Central Act and the State Act as he satisfies the definition of a workman under both the statutes, independent of the provisions of the Working Journalists Act. The employers here being not an industry carried on by or under the authority of the Central Government or one who fall under any of the specified categories or named establishment, authorities or bodies, mentioned under Section 2(a)(i) of the Central Act, the Appropriate Government would be the State Government in accordance of the provisions of Section 2(a) (ii) of the Act, last mentioned. Accordingly, reference of the dispute under Section 4-K of the State Act is valid and competent. Since the reference under Section 4-K of the State Act is competent, the further question, "Whether the Labour Court/ Industrial Tribunal constituted under the Central Act alone is competent to answer a reference in relation to the workman?" is not required to be answered."

27. In so far as the definition of "newspaper employee" as contained in Section 2(c) as well as definition of "non journalist newspaper employee" as contained in Section 2(dd) of the Act, 1955 is concerned, this Court in view of the Division Bench judgment of Orissa High Court in the case of *Pratap Chandra Mohanty (supra)*, as referred to and relied upon by this Court in its judgment in the case of *Jagran Prakashan (supra)* and in light of Section 3 of the Central Act, 1947, has extended the provisions of the Act of 1955 to the working of the respondent no.3 holding that he would fall in the inclusion clause contained under Section 2(c) which is apparent from the words "and includes any other person employed to do any work in, or in relation to, any newspaper establishment".

28. The other contention of Sri Nigam with reference to Section 3 that it was only the Central Government which was competent to make a reference in the matter, this Court finds that by virtue of Section 2(a) (ii) of the Central Act, 1947, it was the State Government which was fully competent to make a reference and Section 3 of the Act 1955 does not in any manner restrict power of the State Government to make a reference inasmuch as the power to make a reference by the State Government is implicit in the Central Act 1955 itself and keeping in view of the nature of the petitioner establishment, this Court finds that Section 2(a) (ii) of the Central Act,

1947 fully clothed to the State Government with power to make a reference to the Labour Court. The said provision is reproduced herein below:-

"2(a)(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

68. ... This Court, while discussing validity of reference made in the aforesaid writ petitions argued by Sri S.S. Nigam, has held that appropriate Government to make a reference to the Labour Court was State Government. No further deliberation is required on the said issue, particularly when, the reference order is not under challenge nor has it been annexed.

11. On two occasions between inter parties, this Court has taken a view that reference can be made by the State Government and the said orders have not been assailed by the petitioner as no material has been brought to the notice of this Court that the said orders have been set aside, modified or reversed by any of the competent Court.

12. In view of above discussion, no case is made out for interference. The writ petitions are dismissed accordingly.

Order Date :- 11.12.2023

Rahul Dwivedi/-