

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 41395 and 41400 of 2017

Common Order:

Since the facts involved in both the Writ Petitions are similar, they are being disposed of by this common order.

Heard learned counsel for the petitioners.

The petitioners were appointed as Production Officer and Production Executive on 01.02.2008 and 28.11.2006 respectively by the second respondent and the second respondent is owned by the third respondent. The petitioners state that the respondents 2 and 3 are Newspaper Establishments as defined under Section 2(d) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short 'the Act'). It is the further case of the petitioners that they along with other employees have been demanding the second respondent with regard to payment of Majithia Wage Board Award wages, as the wages determined by the said Award were not paid. They issued a legal notice on 06.11.2017 claiming the wages as per the said Award and the same was rejected by reply notice dated 29.11.2017. In those circumstances, the petitioners filed a petition under Section 17(2) of the Act before the first respondent. A joint meeting was convened on 08.12.2017 by the first respondent. When the said joint meeting is proposed to be held on 08.12.2017 and when the orders of transfer were passed on 30.11.2017, the present Writ Petitions are filed challenging the said orders of transfer.

Learned counsel appearing for the petitioners submits that when conciliation proceedings are pending before the competent authority, the orders of transfer are hit by Section 33 of the Industrial Disputes Act. He

further submits that it amounts to unfair labour practise as indicated in the V-Schedule of the Industrial Disputes Act.

Section 33 of the Industrial Disputes Act states that during the pendency of any conciliation proceedings before a Conciliation Officer or a Board no employer shall alter the conditions of service applicable to the workmen immediately before the commencement of proceedings in regard to any matter connected with the dispute. It is also stated that for any misconduct connected with the dispute no workmen shall be discharged or punished whether by dismissal or otherwise considering such dispute. The dispute now pending before the competent authority is with regard to payment of wages and the proposed transfer cannot be said to be a matter connected with the said dispute. With regard to effect on conditions of service, the condition of service is not altered at all by transfer of an employee, which is now affected by virtue of the standing orders that are applicable to the employee.

Learned counsel for the petitioners relied on the following observations of the Hon'ble Supreme Court made in *Avishek Raja and others v. Sanjay Gupta* (Contempt Petition (Civil) No.411 of 2014 in W.P (Civil) No.246 of 2011, dated 19.06.2017).

“28. Insofar as the writ petitions seeking interference with transfer/termination, as the case may be, are concerned, it appears that the same are relatable to service conditions of the concerned writ petitioners. Adjudication of such question in the exercise of high prerogative writ jurisdiction of this Court under Article 32 of the Constitution would not only be unjustified but such questions should be left for determination before the appropriate authority either under the Act or under cognate provisions of law (Industrial Disputes Act, 1947 etc.), as the case may be.”

A reading of the above observations makes it clear that the petitioners cannot seek interference in respect of the service conditions

relating to transfer/termination in a proceeding under Article 32 of the Constitution which is similar to Article 226 of the Constitution of India. Hence, on this ground also, this Court is not satisfied with the grounds raised by the petitioners.

The Writ Petitions are, accordingly, dismissed at the admission stage. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

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A. RAMALINGESWARA RAO, J

Date: 07.12.2017  
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