

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7834 OF 2018

Lokmat Media (P) Limited Petitioner

Vs.

Mr. Javed Hasan Shariff Respondent

Mr. Dhananjay J. Bhanage a/w Mr. Mayur D. Joglekar for the
Petitioner.

Mr. Nitin Arvind Kulkarni for Respondent.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 16th October 2018.

P.C.:

1 Heard. Rule. Rule returnable forthwith with the consent
of the parties.

2 The petitioner herein impugns the order dated 8th
January 2018 passed by the Presiding Officer, Labour Court No. 2,
Pune. The facts of the case in nutshell are as follows :

The petitioner is engaged in publication and circulation of several newspapers like Daily Lokmat, Lokmat Times etc. The respondent herein was working as 'Front Office Assistant' with the petitioner w.e.f. 16th August 1999. The respondent had tendered his resignation to the petitioner on 8th July 2014. It is the case of respondent that at the time of relieving him from services, the amount due to him was not paid by the Company and therefore the petitioner had approached the Labour Court by filing an application under Section 33(C)(2) of the Industrial Disputes Act, 1947.

3 The petitioner herein had raised a preliminary issue as far as jurisdiction is concerned, in view of the provisions of Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

4 It was the contention of the petitioner that an application under Section 33(C)(2) of the Industrial Disputes Act would not be maintainable and that respondent no.1 ought to have filed an application before the State Government i.e. before the Labour

Commissioner, in view of Section 17(1) and 17 (2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

5 The learned Labour Court had considered the petition and had framed an issue whether this Court has jurisdiction to try this application i.e. an application under Section 33(C)(2) of the Industrial Disputes Act and has answered said issue in the affirmative. Hence, this petition. Section 17(1)(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 reads as follows :

17. Recovery of money due from an employer.—

(1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in

the same manner as an arrears of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law,

6 In view of this statutory provisions, this Court is of the opinion that the order dated 8th January 2018 deserves to be quashed and set aside.

7 Learned counsel for the petitioner has placed implicit reliance upon the judgment of the Hon'ble Apex Court in the case of Shri. Samarajit Ghosh Vs. Bennett Coleman and Co. and another, reported in A.I.R., 1987, Supreme Court, page 1869. The Hon'ble Apex Court has observed as follows :

6. When all the provisions of S.17 are considered together, it is apparent that they constitute a single scheme. In simple terms, the

scheme is this. A newspaper employee, who claims that an amount due to him has not been paid by his employer, can apply to the State Government for recovery of the amount. If no dispute arises as to the amount due, the Collector will recover the amount from the employer and pay it over to the newspaper employees. If a question arises as to the amount due, it is a question which arises on the application made by the newspaper employee, and the application having been made before the appropriate State Government, it is that State Government which call for an adjudication of the dispute by referring the question to a Labour Court. When the Labour Court has decided the question, it will forward its decision to the State Government which made the reference, and thereafter the State Government will direct that recovery proceedings shall be taken. In other words, the State Government before whom the application for recovery is made is the State Government which will refer the question as to the amount due to a Labour Court, and the Labour Court upon reaching its decision will forward the decision to the State Government, which will then direct recovery of the amount.

8 Learned counsel for the respondent therefore fairly concedes that the order of the Labour Court be quashed and set aside. However, the respondent be granted the liberty to approach the State Government i.e. the Labour Commissioner. Liberty as prayed for is granted. The respondent shall approach the Labour

Commissioner by filing an application under Section 17(1)(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 on/or before 30th November 2018.

9 The Labour Commissioner shall decide the said application in accordance with law without being influenced either by the observations of the Labour Court or this Court. It is however made clear that this Court has not gone into the merits of the matter except for considering the preliminary issue as to whether an application under Section 33(C)(2) of the Industrial Disputes Act is maintainable in view of the Section 17(1)(2) Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act.

10 The Labour Commissioner may decide the application by considering the provisions of Section 17(1)(2) of the Act. In case any dispute arises, the Labour Commissioner as contemplated under Section 17(1)(2) of the Act shall make a reference to the Labour Court.

11 With these directions, the petition is allowed. Rule is made absolute in above terms. The petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)