

THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10998 of 2018

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1. Jagaran Prakashan Limited, C-5, C-6 and C-15, Industrial Area, Patliputra, Patna-800013, through its Authorized Signatory and Assistant General Manager (Personnel), Vinod Kumar Shukla, Son of Late Devendra Kumar Shukla
 2. Mahendra Mohan Gupta Son of Late P.C. Gupta, Chairman and Managing Director, Jagaran Prakashan Limited, Jagaran Building-2, Sarvodaya Nagar, Kanpur- 208005 Uttar Pradesh.
 3. Sanjay Gupta Son of late Narendra Mohan Gupta, Editor -in-Chief and CEO, Jagaran Prakashan Limited, Jagaran Building-2, Sarvodaya Nagar, Kanpur- 208005 Uttar Pradesh.
 4. Sunil Gupta Son of Shri Yogendra Mohan Gupta, Director and Incharge, Bihar and Jharkhand, Jagaran Prakashan Limited, C-5, C-6 and C-15, Industrial Area, Patliputra, Patna- 800013
 5. Anand Tripathi Son of Shri Gauri Shankar Tripathi, Chief General Manager, Jagaran Prakashan Limited, C-5, C-6 and C-15, Industrial Area, Patliputra, Patna- 800013
 6. Sadguru Saran Awasthi Son of Shri Ram Prakash Awasthi, Associate Editor, Jagaran Prakashan Limited, C-5, C-6 and C-15, Industrial Area, Patliputra, Patna- 800013
 7. Vinod Kumar Shukla Son of late Devendra Kumar Shukla, Assistant General Manager (Personnel), Jagaran Prakashan Limited, C-5, C-6 and C-15, Industrial Area, Patliputra, Patna- 800013

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna-800001.
2. The Joint Labour Commissioner, Bihar, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna.
3. The Collector-Cum-District Certificate Officer, Patna Under Bihar and Orissa Public Demand Recovery
4. Pankaj Kumar Son of late Girindra Mohan Prasad Resident of Mohalla- Pita Maheshwar, Police Station- Civil Line, District- Gaya, 823001

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Sinha, Advocate Mr. Indrajeet Bhushan, Advocate Mr. Manish Kumar, Advocate
For the State	:	Mr. Niraj Kumar Sinha, AC to PAAG-2
For the Pvt. Respondent	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar, Advocate Mr. Ravi Bhatia, Advocate



CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
C.A.V. JUDGMENT

Date : 25-09-2019

1. Heard the counsel for the petitioners, counsel for the State and counsel for the private respondent.
2. In the present case, the petitioners, which engaged in the paper publication, incorporated under the Companies Act, has challenged the judgment and order dated 20.04.2018 (Annexure-1) passed by the Joint Labour Commissioner-cum-Competent Authority, Labour Resources Department (hereinafter mentioned as 'the Authority'), whereby and whereunder the Authority has directed for payment of Rs.60,42,749/- arising from Majithia Wage Board Recommendation and vide Letter dated 20.04.2018 sent requisition to the District Magistrate-cum-District Recovery Officer to realize an amount of Rs.60,42,749/- as public demand under the Bihar & Orissa Public Recovery Act.
3. The present case is related to entitlement and enforcement of the Majithia Wage Board Award. Mr. Pankaj Kumar has been working as Sub-Editor at Gaya, later on, vide order dated 20.03.2017, has been transferred from Gaya to Jammu which is pending adjudication in Reference Case No.01 of 2017 before the Labour Court, Dalmia Nagar.



4. Before adverting to the present case, it is necessary to exposite the background of litigation, which has generated the present case.

5. The service conditions of journalist and non-journalist employee are governed and regulated by the terms and conditions of service fixed by Wage Board, constituted by the Government of India under Section 9 of The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter mentioned as Working Journalist Act), on acceptance of recommendation, the Central Government in terms of recommendation of the Board or subject to such modification, if any, would pass an order, publish the same in the official Gazette and the recommendation (Award) would come into operation on the date of publication or on such date, prospectively or retrospectively, as may be specified in the order, on Gazette notification would become the service condition of the working journalist and non-working journalist attached to the paper industry, earlier service condition was governed by the Bachawat Wage Board Award. On the dispute raised by the working journalist as well as non-working journalist attached to the different paper industries, the Central Government in exercise of power under Sections 9 and 13 C of the Working Journalist Act



constituted two Wage Boards vide notification dated 24.05.2007 under the Chairmanship of one Dr. Justice Narayana Kurup (a retired Acting Chief Justice of Madras High Court) to determine the wages of the employees working as working journalist and non-working journalist, attached to the newspaper industries. While Justice Kurup resigned from the post of Chairmanship on 31.07.2008, in his place, the Central Government appointed Justice G.R. Majithia (a retired Judge of Bombay High Court) as a Chairman of the Wage Boards on 04.03.2009. The Wage Boards headed by Justice Majithia submitted its recommendation to the Central Government on 31.12.2010, the same was accepted by the Central Government on 25.10.2011, a Notification to that effect under Section 12 of the Working Journalist Act was published on 11.11.2011, accordingly the recommendation of the Wage Board became service conditions of the journalist and non-journalist employees attached with Newspaper Industry, accordingly became entitled to the wages and different allowances fixed by the Wage Board, has on the basis of size and turnover of paper establishment classified and categorized in eight segment.

6. Before the Central Government could issue Notification under Section 12 of Working Journalist Act, the various newspaper-establishments, which were apprehending to be



affected by the recommendation of Wage Board Award, challenged the same by filing different writ petitions under Article 32 of the Constitution of India, the lead case was Writ Petition (C) No. 246 of 2011 and during the pendency of the writ applications, the Government has issued a Notification under Section 12 of the Working Journalist Act on 11.11.2011, which was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court, after considering the objections of different newspaper industries finally refused to accede the objections raised by the different newspaper establishments. While dismissing the writ petition, the Hon'ble Supreme Court has summarized, directions in the following manner :-

“(i) After having exhaustively gone through the record of proceedings and various written communications, we are fully satisfied that the Majithia Wage Board proceedings had been conducted and carried out in a legitimate approach and no decision of the Wage Board is perceived to having been taken unilaterally or arbitrarily. Rather all decisions were reached in a coherent manner in the presence of all the Wage Board members after having processed various statistics and we find no irregularity in the procedure adopted by the impugned Wage Board.

(ii) After perusing the relevant documents, we are satisfied that comprehensive and detailed study has been carried out by the Wage Board by collecting all the relevant material information for the purpose of



the Wage Revision. The recommendations are arrived at after weighing the pros and cons of various methods in the process and principles of the Wage Revision in the modern era. It cannot be held that the wage structure recommended by the Majithia Wage Board is unreasonable.

(iii) We have carefully scrutinized all the Sixth Central Pay Commission have not been blindly imported/relied upon by the Majithia Wage Board. The concept of 'variable pay' contained in the recommendations of the Sixth Central Pay Commission has been incorporated into the Wage Board Recommendations only to ensure that the wages of the newspaper employees are at par with those employees working in other Government sectors. Such incorporation was made by the Majithia Wage Board after careful consideration, in order to ensure equitable treatment to employees of newspaper establishments, and it was will within its rights to do so.

(iv) Accordingly, we hold that the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Consequently, all the writ petitions are dismissed.

(v) In view of our conclusions and dismissal of all the writ petitions, the wages as revised/determined shall be payable from 11.11.2011 when the Government of India has notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible



persons in four equal installments within a period of one year from today and continue to pay the revised wages from April, 2014”.

7. Accordingly, Hon’ble Supreme Court dismissed all writ petitions, did not find fault, as wages and allowances having been fixed, taking clue from fixation of pay and allowances under 7th Pay Revision Committee Report.

8. The Majithia Wage Board classified the newspaper establishments in different categories based on the average gross revenue generated by the establishments. Accordingly, newspaper establishments have been divided in eight categories based on the average gross revenue. The Wage Board recommended revision of pay scale and different nature of allowances, such as, dearness allowance, house rent allowance, transport allowance, hill area allowance (hardship allowance) etc. The core areas of controversy has been generated in the present case on account of Clause 20 (j) of the Majithia Wage Board Award, which is as follows :

“20 (j) The revised pay scales shall become applicable to all employees with effect from the 1st of July, 2010. However, if an employee within three weeks from the date of publication of the Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scale and



‘existing emolument’, he shall be entitled to retain his existing scale and such emoluments”.

9. The Majithia Wage Board Award granted relaxation to those establishments which suffered heavy cash loss in three preceding accounting years, shall be exempted from payment of arrears, which is apparently clear from Clause 21 of the Award, which is as follows :

“21. The arrears payable from the date of enforcement of the Award, if any, as a result of retrospective implementation, shall be paid in three equal installments after every six months from the date of enforcement of the Award and the first installment shall be paid within three months;

Provided that the newspaper establishments, who suffered heavy cash losses consequently in three accounting years preceding the date of implementation of the Awards, shall be exempted from payment of any arrears. However, these newspaper establishments would be required to fix salaries or wages of their employees on notional basis in the revised scales of pay with effect from the date of implementation of the Awards, i.e., the 1st July, 2010”.

10. After the enforcement and approval of Majithia Wage Board recommendation, large number of complaints were filed before the Hon’ble Supreme Court that the journalist and non-



journalist employees attached to the paper industries were not receiving the wages and allowances as per the Majithia Wage Board Award, the Hon'ble Supreme Court vide order dated 28.04.2015 passed the order in the following manner :-

“All the State Governments acting through their respective Chief Secretaries shall, within four weeks from today, appoint inspectors under Section 17-B of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 to determine as to whether the dues and entitlements of all categories of newspaper employees, including journalists under the Majithia Wage Board Award, has been implemented in accordance with the terms thereof. The inspectors appointed by the State Government will naturally exercise their powers as provided under the Act and shall submit their report to this Court through the Labour Commissioners of each State indicating the precise findings on the issue indicated above.”

11. Another order dated 14.03.2016 was passed by the Hon'ble Supreme Court in the following terms :

“We have also taken note of the various interlocutory applications that have been filed alleging wrongful termination of services and fraudulent surrender of the rights under the Wage Board recommendations to avoid liabilities in terms of the order of the Court. As such complaints received till date is substantial in number, this Court is not in a position to individually examine each case.



We, therefore, direct the Labour Commissioner of each of the States to look into all such grievances and on determination of the same file necessary reports before the Court which will also be so filed on or before 12-7-2016. We grant liberty to each of the individual employees who have filed the interlocutory applications and also such employees who are yet to approach this Court but have a grievance of the kind indicated above to move the Labour Commissioner of the State concerned in terms of the present order.”

12. Thereafter, the order dated 8.11.2016 was passed in the following terms :

“For reasons we do not consider necessary at present to record the exercise of monitoring the implementation of the Majithia Wage Board Recommendations on the basis of the reports called for from the Labour Commissioners of different States stand deferred to a later date. Instead, it would be prudent and in fact necessary to decide certain questions of law which now stand formulated and have been submitted to the Court by Shri Colin Gonsalves, learned Senior Counsel, at the request of the Court.

Once the legal formulations are considered and decided, further orders with regard to the mechanism to implement the Majithia Wage Board Recommendations will follow.”

13. Finally, all the contempt petitions were disposed of by the Hon’ble Supreme Court recording that on the basis of the Reports



submitted by the Labour Commissioners of different States, it transpired that some of the establishments have implemented the Award in full, whereas others have implemented the same partially and in some cases no progress has been made in the matter of implementation and the reasons for non-implementation of the Award or partial implementation, as the case may be, as evident from the reports of the Labour Commissioners can be identified are indicated below :

“(1) As reported by the Labour Commissioners in some of the establishments, as per Clause 20 (j) of the Majithia Award many employees have agreed to be governed by the wage structure which had existed before the Majithia Wage Board recommendations were accepted and notified by the Central Government. The issue of authenticity and the voluntariness of such undertakings, allegedly submitted by the employees, is also highlighted in the reports of the Labour Commissioner indicating that the same are being subjected to the adjudicatory process under the provisions of Section 17 (quoted above) of the Act.

(2) The terms of the Majithia Wage Board Award are required to be implemented by the newspaper establishments only for regular employees and not 17 for contractual employees.

(3) The element of “variable pay” recommended by the Majithia Wage Board and accepted by the Central Government are not required



to be taken into account for the purpose of calculating other allowances like Dearness Allowance etc.

(4) As per the reports of the Labour Commissioners submitted to this Court a large number of newspaper establishments have expressed their inability to pay the arrears in view of serious financial constraints”.

14. Basically, the claim has been made by the working journalist and non-working journalist that they are entitled to receive wages as per the Majithia Wage Board, once the recommendation has been accepted and notified by the Central Government, as has been claimed that Sections 13 and 16 of the Working Journalist Act make it very clear that after the Notification of the Wage Board recommendation, supersedes all existing arrangements including contractual arrangements, governing conditions of service of working journalist and non-working journalist employees and their service condition would be governed as per Wage Board Award and no in-certain term, specifically pronounce, every working journalist and non-working journalist shall be entitled to be paid by employer not less than the rates of wages specified under the Wage Board, but the Court has finally refused to initiate a proceeding under the Contempt of Courts Act, to understand the orders of Hon'ble Supreme Court, two paragraphs of the order passed by the Hon'ble Supreme Court



are essential to be quoted such as paragraphs 23 and 24 for the purpose of present case, which are noted below.

“23. The Majithia Wage Board Award has been approved by this Court by its judgment dated 07.02.2014 passed in Writ Petition No.246 of 2011. The Award, therefore, has to be implemented in full. While it is correct that issues concerning, (i) Clause 20 (j); (ii) whether the award applies to contractual employees; (iii) whether it includes variable pay and (iv) the extent of financial erosion that would justify withholding of payment of arrears has not been specifically dealt with either in the Award or in the judgment of this Court, there can be no manner of doubt that a reiteration of the scope and ambit of the terms of the Award would necessarily be called for and justified. This is what we propose to do hereinafter so as to ensure due and full compliance with the order(s) of the Court.

24. Insofar as the highly contentious issue of Clause 20(j) of the Award read with the provisions of the Act is concerned it is clear that what the Act guarantees to 27 each “newspaper employee” as defined in Section 2(c) of the Act is the entitlement to receive wages as recommended by the Wage Board and approved and notified by the Central Government under Section 12 of the Act. The wages notified supersedes all existing contracts governing wages as may be in force. However, the Legislature has made it clear by incorporating the provisions of Section 16 that, notwithstanding the wages as may be fixed and notified, it will always be



open to the concerned employee to agree to and accept any benefits which is more favourable to him than what has been notified under Section 12 of the Act. Clause 20(j) of the Majithia Wage Board Award will, therefore, have to be read and understood in the above light. The Act is silent on the availability of an option to receive less than what is due to an employee under the Act. Such an option really lies in the domain of the doctrine of waiver, an issue that does not arise in the present case in view of the specific stand of the concerned employees in the present case with regard to the involuntary nature of the undertakings allegedly furnished by them. The 28 dispute that arises, therefore, has to be resolved by the fact finding authority under Section 17 of the Act, as adverted to hereinafter”.

15. The Court has also recorded and considered the complaint that on account of implementation of the Award, the Managements have transferred certain employees to the different places.

16. On perusal of aforesaid paragraphs 23 and 24, the Hon’ble Supreme Court has dealt with the issue, in the event of inconsistencies in the wage structure emanating from the Wage Board and *vis-a-vis* the existing pay fixed under the contract or otherwise, the structure of pay scale fixed which supersedes all existing pay scale, but employees would be at liberty to agree and accept any benefit which is more favourable to them. While



dealing with the matter with regard to the wage, the Hon'ble Supreme Court was of the view that the Award should be implemented in full extent, but the issue concerning (i) Clause 20 (j); (ii) whether the award applies to contractual employees; (iii) whether it includes variable pay and (iv) the extent of financial erosion that would justify withholding of payment of arrears has not been specifically dealt with either in the Award or in the judgment of the Hon'ble Supreme Court, except those gray area, the Award has to be implemented fully without any rider and the Court has said that the wages notified supersedes all the existing contracts governing wages as may be in force. However, the Legislature has made it clear, by incorporating the provisions of Section 16 which stipulates, notwithstanding the wages as may be fixed and notified, it will always be open to the concerned employee to agree to and accept any benefits which is more favourable to him what has been notified in Section 12 of the Act and further clarified that Clause 20 (j) of the Majithia Wage Board Award will, therefore, have to be read and understood in the light of provisions of Section 16 of Working Journalist Act.

17. It has been pointed out by the petitioners that on the query made by the Hon'ble Supreme Court with regard to the status of implementation of recommendation of the Majithia Wage Board to



the different States, the Government of Bihar has entrusted its official to give the status of implementation of Majithia Wage Board Award by different newspaper industries operating in the State of Bihar. In pursuance thereof, the Labour Commissioner of Bihar submitted its report to the Assistant Registrar, Supreme Court of India attaching the Report in the matter of implementation of the Majithia Wage Board recommendation. With respect to the present newspaper establishment, it has been shown the compliance report and on that basis, counsel for the petitioners submits that there is no dispute with regard to the implementation of the Wage Board Award. It has also been pointed out by the petitioners that after disposal of the writ application, one Avishek Raja and Pankaj Kumar approached the Hon'ble Supreme Court complaining about the non-implementation of the Majithia Wage Board recommendation, but the counsel for the other side has produced a copy of the Special Leave Petition from where it appears that Mr. Pankaj Kumar had not gone to make complain about the non-implementation of the Majithia Wage Board Award rather he had gone against the order of transfer affected upon the petitioner, the same was considered by the Hon'ble Supreme Court, refused to entertain the application on validity of the transfer, directed to seek the remedy under Section 17 (2) of the



Working Journalist Act. Pankaj Kumar, Sub-Editor (respondent no.4) posted at Gaya, is of the view that working journalist attached to the present establishment has been receiving wages and allowances below the rates of wages fixed by the Wage Board, filed an application to the Secretary to the Government, Labour Resources Department, Government of Bihar, Patna in Form 'C' thrice, for the first time, he claimed Rs.32,90,554/- vide Annexure-10 and in second time, he filed an application under Form 'C' for Rs.41,94,105/- vide Annexure-11 and the third time, the total amount has been claimed for Rs.60,42,749/- vide Annexure-12.

18. The notice was issued to the Management, on receipt of the notice, the management appeared and filed its objection vide Annexure-13 wherein primary objection has been taken with regard to the maintainability of the application before the authority concerned, raised the issue that the State Authority of the Labour Department does not have any jurisdiction to decide the issue on disputed question, facts and issues involved in exercise of power under Section 17 (1) of the Working Journalist Act, as has been claimed that in terms of Majithia Wage Board Award in case of dispute and denial in terms of Clause 20 (j) of the Majithia Wage Board, the matter has to be referred by the State Government to the competent Labour Court for adjudication, as the entitlement of



the applicant (respondent no.4) is under challenge, instead of deciding the issues arising in connection with the implementation of Majithia Wage Board Award of its own, should refer to competent Labour Court constituted under Industrial Disputes Act by the State Government. It has been stated that working journalist and non-working journalist after their due deliberation and consideration has exercised the option to remain with the old system of payment of wages and allowance as they are happy with the old system of payment of wages and allowance, as such, claim made by the private respondent for payment of Rs.60 lacs is not tenable in law and for that a document has been attached showing the option given by the working journalist and non-working journalist employees, but it has been pointed out by counsel for the other side that the document relied, on the face of it, indicates the same is a tampered document, which is apparent from the face of it, as in first page serial number starts from serial number 1 to 6, second page also starts from serial number 1 and onward. So, the submission has been made by the other side that document relied upon by the petitioners has been manufactured by the management petitioner for the purpose of the case with a view to deprive them of the benefit arising from Majithia Wage Board and option that has been shown is based on managed and manipulated document,



cannot be the basis for taking away the right to get the benefits arising from the Majithia Wage Board Award which is far better than that existing wages and allowances paid to them.

19. It appears that after hearing both the sides, the Joint Labour Commissioner has accepted the plea of the private respondent and directed for payment of Rs.60,42,749/-.

20. Another point has been raised that the claim which the private respondent has made is not based upon any material and the same has been accepted by the respondent in paragraph 14 of the counter affidavit stating that it is not required to be supported by any substantial document as the recommendation of the Majithia Wage Board itself creates in what manner the calculation has to be made.

21. The primary question in the present case as has been raised by the petitioners that the Joint Labour Commissioner has wrongly assumed jurisdiction, decided the case under Section 17 (1), can be exercised in the event of undisputed claim of the working journalist or non-working journalist, but in the event the dispute is raised by the management, in such circumstances, the obligation lies to the State Government to refer the dispute under Section 17 (2) of the Working Journalist Act where both the parties will be at liberty to prove their respective claim through proper



evidence, accordingly, the Labour Court on due consideration of the material on record would pass the award, it is further submitted that even during the contempt proceeding, the Hon'ble Supreme Court has said that, in the event of such dispute, to resolve the same, directed for reference under Section 17 of the Working Journalist Act, placed reliance on following judgments :- ***AIR 1958 (SC) 507 (Kasturi and Sons (Private) Ltd. Vs. N. Salivateswaran & Ors. (Para 5 to 12) , AIR 1987 (SC) 1869 (Samarjit Ghosh Vs. M/S Benett Coleman & Company) (para 6), 2000 (1) LLJ 1147 (Allahabad Patrika Vs. Presiding Officer & Ors.) (Para 6, 7, 8 and 9), 2018 SCC Online Bom 1872 (Shree Ambika Printers and Publications Vs. Bharati Umesh Kotiyan)*** and further submitted that the recommendation of the Wage Board is not treated to be an Award, but it is the recommendation, unless the right of the parties crystallize, the power under Section 17 (1) of the Working Journalist Act cannot be exercised, calculation made thereunder, cannot be asked to deposit the same. In support of contention that the Wage Board is merely a recommendation not an Award, has placed reliance on the judgment ***2015 (2) PLJR 257 (SC) (paragraphs 18 and 21).***

22. Counsel for the other side has submitted that by mere filing an objection can not be said to have denied the claim of the private



respondent, merely vague denial will not be a denial in terms of the law unless specifically raised and denied with substantial material fact, further stated that the Management nowhere disclosed that what quantum of amount the Respondent would be entitled in terms of the Wage Board but based his submission on purported document which itself is manipulated, there is no disclosure of the amount payable to the respondent no.4 and in absence of the same, the Authority of Labour Department has rightly exercised the power under Section 17 (1) of the Working Journalist Act. It has also been submitted that the Hon'ble Supreme Court in clear term held that the working journalist will be entitled to the Majithia Wage Board, all previous arrangement of payment of wage and allowance will be treated to have been superseded but option has been given that they are liberty to give option of payment of old rate if the same is more favourable and better facility arising from the agreement between the parties and placed reliance on the order passed by the Hon'ble Supreme Court and also placed reliance on the judgment reported in 2017 SC 2955 (paragraphs 11, 15 and 24).

23. In view of proposition and counter proposition, this Court is required to decide as to whether the Authority has rightly exercised the power under Section 17 (1) of Working Journalist Act read



with clause 20 (j) of the Majithia Wage Board Award or looking to the nature of dispute, the Government was required to refer the dispute under Section 17 (2) for adjudication before the competent Labour Court.

24. The question which has been raised about referring the dispute to the Labour Court requires consideration and interpretation of the provisions of Working Journalist Act as without its proper consideration, this Court will not be able to arrive to a right conclusion.

25. Working Journalist Act has been divided in four Chapters. Chapter I deals with short title and extends to whole of India and defining several words used in different places in the Act. Chapter II deals with different provisions relating to the condition of service of working journalist and Chapter II-A deals with condition of service of non-journalist newspaper employees. Chapter III declares applicability of provisions of different Acts, such as, Industrial Employment (Standing Orders) Act, the Employees' Provident Funds Act, 1952. Chapter IV deals with miscellaneous subjects, such as, in the event of inconsistency, the provisions of the Working Journalist Act will prevail upon the provisions of any other Acts, prohibits of dismissal or discharge of newspaper employees, on account of increase of liabilities on



account of implementation of Wage Board Award. Manner, mode, method and forum have been provided for recovery of money due from an employer. The Central Government has been authorized to frame Rule to carry out the purpose of the Act.

26. For the purpose of present case, this Court would discuss and deal with certain provisions of Working Journalist Act, which are relevant for resolution of dispute involved in the present case.

26 (i) Section 9 prescribes the procedure for the purpose of fixing or revising rates of wages in respect of working journalists under this Act, in the term that, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of three persons, representative of employers in relation to newspaper establishments, three persons representative of working journalists and four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.

26 (ii) Section 13-C is with respect to non-journalist newspaper employees provides, in the similar manner, the Wage Board would be constituted for fixing and revising the rates of wages for non-journalist employees attached with the paper industries.



26 (iii) Section 10 mentions about the recommendation of the Wage Board and powers and procedure to be followed by the Board has been dealt with in Section 11. Sections 12, 13, 16 and 17 dealing with the manner the recommendation of the Wage Board would be implemented and its consequence, including the right of employees emanating from Wage Board Award vis-a-vis any contract or agreement between the employer and employee, which has been dealt with in Section 16. It will be proper to make a forensic examination of Sections 12, 13, 16 and 17.

26 (iv) Section 12 itself makes it clear that on receipt of the recommendations of the Board, the Central Government would make an order in terms of the recommendations or subject to such modifications, if any, and the same would be published in the Official Gazette, the order would come into operation on the date of its publication or from earlier date as fixed by the Central Government.

26 (v) Section 13 read with Section 16 of Working Journalist Act exposites that on coming into operation of an order of the Central Government, every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rate of wages specified in the order. Section 13 read with Section 16 of the Act makes it clear that in the event of



inconsistencies of the rate, at which, the working journalists are being paid and after the enforcement of Wage Board, they would be entitled the wage and allowance as per the Wage Board Award. Identically, the same principle will applicable to the non-working journalist, as per the provision of Working Journalist Act, in the event of inconsistency with any other law or award, agreement or contract of service, the Wage Board Award would prevail, whether made before or after commencement of this Act. Sub Section 2 of Section 16 does not preclude any newspaper employee from entering into an agreement with an employer for rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.

27. In the present case, the controversy centers around that the employer has taken a plea that the working journalist and non-working journalist has opted to remain with the old wage structure through settlement is the basis for objecting the claim of Pankaj Kumar, respondent no.4 has wrongly made claim by filing application for payment of money set out in his application. The Working Journalist Act is beneficial piece of legislation, it requires liberal interpretation, but would not mean of doing violence to the plain and simple language used in the statutory provision, it is not reasonable or permissible duty or work of the Court to rewrite the



statutory provision. The basic facet of beneficent legislation is to ameliorate service conditions of weaker section, must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief. The law in this line is very much settled that where legislature enacts a law for the solution of human problem, in interpretation of construction of such legislation and particularly judging its validity, the courts should approach it, from the point of furthering the purpose of legislation and in case of any ambiguity, the Court would lean in favour of the worker, who is weaker before the management which itself is a giant, whereas the workers are always required protection. The bargaining power of the management *vis-a-vis* the worker certainly the worker will have no bargaining power or very low bargaining power before the management.

28. It is well settled principle of law that the Court cannot read anything not mentioned into the statutory provision where words are plain, simple and unambiguous. A statute is edict of the legislature. The object of interpreting a statute is to ascertain the intention of the legislature which would be gathered from the language used in formulation of statutory provision of statute that means, the attention should be given to what has not been mentioned in the statutory provision. It is contrary to law of



interpretation of Statute, to import words into an Act in the name of interpretation of statutory provision unless it is absolutely necessary or unless the provisions as it stands is meaningless and brings absurd situation, creates anomalies and injustice, except in that situation, the Courts would read words of Statute in plain and simple manner as stand in the statutory provision.

29. It is also well settled that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of general purpose and object of the Act. It will be relevant to quote paragraph 55 of the judgment reported in *AIR 1952 SC 369 (Aswini Kumar Vs. Arabinda Bose)*.

“55. It is one of the settled rules of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself. Mr Justice Chakravartti of Calcutta High Court laid very great stress on the opening clause of Section 2 of the Act which excludes the operation of certain statutory provisions, and this negative part of the section constitutes, according to the learned Judge, the measure and criterion of the right which the positive part formulates. The first question is, to what extent the provisions of any existing law have been



eliminated by the opening clause of Section 2. The language of the clause is as follows:

“Notwithstanding anything contained in the Bar Councils Act (38 of 1926), or in any other law regulating the conditions subject to which a person not entered in the roll of advocates of a High Court may be permitted to practise in that High Court....”

30. In the case of *Union of India and Anr. Vs. Hansoli Devi and Ors. reported in (2002) 7 SCC 273* wherein the Hon'ble Supreme Court has said that it is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is also said that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. It will be relevant to quote paragraph 9 of the said judgment :

“9. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain



basic principles of interpretation of a statute. The rule stated by Tindal, C.J. in Sussex Peerage case [(1844) 11 Cl & Fin 85 : 8 ER 1034] still holds the field. The aforesaid rule is to the effect: (ER p. 1057).

If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.”

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson & Co. Ltd. [(1955) 2 All ER 345 : 1955 AC 696 : (1955) 2 WLR 1135] Lord Reid pointed out as to what is the meaning of “ambiguous” and held that: (All ER p. 366 C-D)

“A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning.”



It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of Aswini Kumar Ghose v. Arabinda Bose [AIR 1952 SC 369 : 1953 SCR 1] had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry [AIR 1920 PC 181] it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be



permissible for the court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of Section 28-A of the Act, to answer the questions referred to us by the Bench of two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, (sic on one) who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression “had not made an application to the Collector under Section 18” in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a landowner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in Pradeep Kumari case [(1995) 2 SCC 736] the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated (SCC p. 743, para 10) “the person moving the application did



not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly answer Question 1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894".

31. In the case of *ICICI Bank and another Vs. Municipal Corporation of Greater Bombay and Ors. reported in (2005) 6 SCC 404* in paragraph 16, it has been held that ordinarily the words used in the statute are to be understood in their natural, ordinary and popular sense. In paragraphs 11 and 12 of the said judgment, the Court has also dealt with the manner, the judgments of courts would be dealt with. It has been held that it is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete law declared by



the Supreme Court. The judgment has to be read as a whole and the observations from the judgment have to be considered in the light of the questions which were raised before the Court. It will be relevant to quote paragraphs 11, 12 and 16 of the said judgment :

“11. In the matter of CIT v. Sun Engg. Works (P) Ltd. [(1992) 4 SCC 363] (SCC p. 363) Justice Anand (as His Lordship then was), speaking for the Court, has said that it is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete “law” declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court. The decision on the question involved in the case in which it is rendered and while applying the decision to the later case, the courts must carefully try to ascertain the true principle laid down by the decision and not to pick out words or sentences from the judgment divorced from the context of the question under consideration by the Court.

12. In the case of Municipal Corpn. of Greater Bombay [(2002) 4 SCC 219 : JT (2002) 3 SC 452] Section 328-A was not at all interpreted by this Court. For the case to be a binding precedent, fundamental requirement would be, that the law pronounced should result from the issues raised before the Court between the parties and argued on



both sides. In the matter of the Municipal Corporation of Greater Bombay the definition of “sky-sign” under Section 328 came up for consideration. In reaching the conclusion that the huge metallic board exhibited by BPC petrol bunk on a pole with the name of the company and its symbol (shell symbol) was a sky-sign, this Court laid emphasis on the expression “in the nature of an advertisement” occurring in the definition of “sky-sign” in para 10 which expression is not to be found in Section 328-A. While interpreting Section 328 and construing the words “in the nature of an advertisement, announcement and direction”, this Court held that the advertisement need not necessarily be only or solely for commercial exploitation whereas Section 328-A of the Act speaks about “advertisement” alone and not “in the nature of an advertisement”. Normally the ratio of the case shall be deduced from the facts involved in the case and the particular provision of law which the Court has interpreted and the decision shall be read with reference to and in the context of particular statutory provisions involved in the matter.

16. It is well settled that ordinarily the words used in the statute are to be understood in their natural, ordinary and popular sense. The broad principles underlying the construction and interpretation of the word or phrase in the statute is succinctly extracted from the leading authorities and work of authors and compiled in the book Principles of Statutory Interpretation (9th Edn., 2004) by Justice G.P. Singh, Chapter 2, p. 86 which reads:



“When it is said that words are to be understood first in their natural, ordinary or popular sense, what is meant is that the words must be ascribed that natural, ordinary or popular meaning which they have in relation to the subject-matter with reference to which and the context in which they have been used in the statute. Brett, M.R. called it a ‘cardinal rule’ that ‘whenever you have to construe a statute or document you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used’. ‘No word’, says Professor H.A. Smith ‘has an absolute meaning, for no words can be defined in vacuo, or without reference to some context’. According to Sutherland there is a ‘basic fallacy’ in saying ‘that words have meaning in and of themselves’, and ‘reference to the abstract meaning of words’, states Craies, ‘if there be any such thing, is of little value in interpreting statutes’. In the words of Justice Holmes: ‘A word is not a crystal transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used.’ Shorn of the context, the words by themselves are ‘slippery customers’. Therefore, in determining the meaning of any word or phrase in a statute the first question to be asked is — ‘What is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the



legislature, that it is proper to look for some other possible meaning of the word or phrase’.”

32. In the case of *Union of India and Ors. Vs. Braj Nandan Singh reported in 2006 (1) PLJR (SC) 187* in paragraphs 7 and 8, the Court has dealt with the meaning of words made in the statutory provision has to be read when words are very clear, it has to be given full force as per the grammatical meaning in the event of ambiguity or leading to absurdity, the Court will interpret the same in a manner to effectuate the purpose of legislation. It will be relevant to quote paragraphs 7 and 8 of the said judgment :

“7. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

8. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse [(1997) 6 SCC 312 : AIR 1998 SC 74] .) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection



of words as meaningless has to be avoided. As observed in Crawford v. Spooner [(1846) 6 Moo PC 1 : 4 MIA 179] courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel [(1998) 3 SCC 234 : 1998 SCC (Cri) 737 : JT (1998) 2 SC 253] .) It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See Stock v. Frank Jones (Tipton) Ltd. [(1978) 1 All ER 948 : (1978) 1 WLR 231 (HL)]] Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in Vickers Sons and Maxim Ltd. v. Evans [1910 AC 444 : 79 LJKB 954 (HL)] quoted in Jumma Masjid v. Kodimaniandra Deviah [1962 Supp (2) SCR 554 : AIR 1962 SC 847] .)”

33. As in the present case, the petitioners have very much placed reliance on certain observations of the Hon'ble Supreme Court made in paragraph 24 of the order passed in contempt proceeding, which is not the ratio but an observation of Hon'ble Supreme Court, this issue has come up for consideration before the Hon'ble Supreme Court in the case of *State of Orissa Vs. Sudhansu Sekhar Misra & Ors. reported in AIR 1968 SC 647* where the Court has said in paragraph 13 that a decision is only an



authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It will be relevant to quote paragraph 13 (relevant part) of the said judgment :

“13. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it”.

34. In the case of ***Ashwani Kumar Singh Vs. U.P. Public Service Commission and Ors. reported in AIR 2003 SC 2661 in paragraph 11***, it has been said that observations of Courts are not to be read as Euclid’s theorems nor as provision of the statute. The observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. It will be relevant to quote paragraph 11 of the said judgment :

“11. Courts should not place reliance on decisions without discussing as to how the factual



situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes”.

35. In the case of *Ispat Industries Ltd. Vs. Commissioner of Customs reported in (2006) 12 SCC 583*, the Hon'ble Supreme Court has also said that a case is only an authority for what it actually decides. The ratio of any decision must be understood in the background of the facts of that case. A decision cannot be relied on without disclosing the factual situation. It will be relevant to quote paragraphs 47 to 50 of the said judgment :

47. It must be remembered in this context that a case is only an authority for what it actually decides. As observed by the Supreme Court in State of Orissa v. Sudhansu Sekhar Misra [(1968) 2 SCR 154 : AIR 1968 SC 647] (vide AIR para 13):

“A decision is only an authority for what it actually decides. What is of the essence in a



decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, L.C. said in Quinn v. Leathem [1901 AC 495 : (1900-03) All ER Rep 1 (HL)] :

Now before discussing the case of Allen v. Flood [1898 AC 1 : (1895-99) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.’ ” (emphasis supplied).

48. In Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] this Court observed: (SCC p. 221, para 18)

“The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is



only an authority for what it actually decides, and not what logically follows from it.”

49. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111] this Court observed: (SCC p. 130, para 59)

“It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.” (emphasis supplied).

50. In Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579 : AIR 2004 SC 4778] it was held that a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court held as under: (SCC pp. 584-85, paras 9-12)

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as



statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D)

‘The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge, ...’

10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297 g-h) Lord Reid said, ‘Lord Atkin’s speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances’. Megarry, J. in Shepherd Houses Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267 (Ch D)] observed: (All ER p. 1274 d-e) ‘One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;’. And, in British Rlys. Board v. Herrington [(1972) 2 WLR 537 : (1972) 1 All ER 749 : 1972 AC 877 (HL)] Lord Morris said: (All ER p. 761 c)

‘There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.’



11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)

‘19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.’

‘Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.’ ” (emphasis supplied)”

36. In the case of *Rekha Mukherjee Vs. Ashish Kumar Das* reported in (2004) 1 SCC 483, the Hon’ble Supreme Court has



held that the words of a speech or of judgment will not be treated to be words of legislative enactment and judicial utterances are made in the setting of the facts of a particular case and also said that words and expressions used in the judgment will not be construed in the same manner as statutes or as words and expressions defined in statutes. It will be relevant to quote paragraphs 11, 12 and 13 of the said judgment :

“11. In Padma Sundara Rao v. State of T.N. [(2002) 3 SCC 533] it is stated: (SCC p. 540, para 9)

“There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.” (See also Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496] .)

12. In General Electric Co. v. Renusagar Power Co. [(1987) 4 SCC 137] it was held: (SCC p. 157, para 20)

“As often enough pointed out by us, words and expressions used in a judgment are not to be



construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words ‘adjudication of the merits of the controversy in the suit’ were used by this Court in State of U.P. v. Janki Saran Kailash Chandra [(1973) 2 SCC 96 : (1974) 1 SCR 31 : AIR 1973 SC 2071] the words were not used to take in every adjudication which brought to an end the proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground, are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided.”

13 [Para 13 corrected by Corrigendum No. F.3/Ed.B.J./6/2004] . In Rajeswar Prasad Misra v. State of W.B. [AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] it was held: (AIR p. 1891, para 8)

“No doubt, the law declared by this Court binds courts in India but it should always be remembered that this Court does not enact.”

37. The case of *Oswal Agre Furane Ltd. and another Vs. Oswal Agre Furane Workers Union and Ors. reported in (2005)*



3 *SCC 224* is relied upon to consider the contention of the petitioners that plea of the petitioners of giving option by its employees for payment as per the rate agreed between the parties. In the aforesaid case, the Court has interpreted such agreement applying the principle and considering the maxim “*ex turpi causa non oritur actio*”, an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of no effect. This judgment has been placed reliance with a view to advance the object and purpose enshrined in Section 13 and Section 16 of the Working Journalist Act, it itself prescribes the earlier fixation of pay which is not beneficial will be treated to have been obliterated and employee would be paid whichever is better. It will be relevant to quote paragraph 16 of the said judgment :

“16. It is trite that having regard to the maxim “*ex turpi causa non oritur actio*”, an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of no effect. Parliament has acknowledged the governing factors of such public policy.”

38. In the present case, the Majithia Wage Board Award has to be read in the light of aims, object and purpose of statutory provision, and cannot be read and understood without



understanding the rational and ratio of the judgment of the Hon'ble Supreme Court, it would not be proper to hold certain observation to be ratio of the judgment to be basis to decide the issue, adopting methodology to pick up the word, phrase, or pick up sentence and claim them to be same ratio of the judgment, as has been explained that ratio of judgment is the essence, is called to be *ratio decendi* of the issue decided in that judgment and in view of that, observation cannot be treated to be the judgment decided in that case, it also very much clear that the Wage Board Award cannot be read in derogation to the provision of the Working Journalist Act as the Wage Board has been created and constituted under the statutory provision of Working Journalist Act, it cannot be deemed that any portion of Award will run contrary to the different provisions of the Working Journalist Act. The Hon'ble Supreme Court made it very clear that paragraph 20 (j) will be construed and meant in terms of the statutory provision of Working Journalist Act taking into consideration of Sections 13 and 16 of the said Act and it is also well settled that any agreement or any option against to the public policy will be treated to be void and it does not stand to the reason that journalist or non-journalist employees will give and seek option which is not in their favour when the Wage Board has been constituted to find out the better



service condition of working journalist and non-working journalist employees, in normal circumstances, a normal person would not act to the prejudice to his own interest that too when an umbrella of protection has been granted by the statutory provision.

39. Apart from the aforesaid discussion, in the present case, the respondent no.4 has set out his claim of his entitlement by filing three different applications demanding the different arrears amount and which has been objected by the petitioners taking different grounds which this Court would not decide in view of alternative forum. Section 17 has two parts, i.e., Section 17 (1) and Section 17 (2). Section 17 (1) of the Working Journalist Act which empowers that in the event of any amount is so due, it shall issue a certificate for realization of that amount to the Collector, and the Collector would proceed to recover that amount in the same manner as an arrear of land revenue. The phrase used in Section 17 (1) that “any amount due” as to whether this has to be read in isolation or it has to be read along with provisions of Section 17 (2) of the said Act, which itself shows that if any question arises “as to the amount due” under this Act to a newspaper employee from his employer, the State Government would refer the matter to the Labour Court for adjudication. Section 17 (1) would be construed and means that the power is to be exercised by the competent authority in the



manner that in the event, claim has been filed by the employee which has remained undisputed, in that event, the competent authority will have a jurisdiction to compute and recover the said amount, but in the event the dispute has been raised and still to be verified the actual amount to be claimed by the employee concerned, it requires adjudication and whatever result comes, will be basis for the recovery of the said amount.

40. As is evident from the judgment reported in ***AIR 1958 (SC) 507 (Kasturi and Sons (Private) Ltd. Vs. N. Salivateswaran & Ors)*** while speaking by his Lordships has held that construction of Section 17, with taking note and corresponding provision of Section 20 (1) of the Industrial Disputes Appellate Tribunal Act, 1950 and similarly it is also akin to the provision of Section 33 C (2) of the Industrial Disputes Act, where Section itself provides that the workman is entitled to receive from an employer any benefit, which is capable to be computed in terms of the money. So in the sense, in event of judgment or award, the entitlement of a workman, has already been decided and quantified, in such circumstances, power under Section 17 (1) of the Working Journalist Act would be exercised, otherwise in the event of dispute, the Government would refer the matter for adjudication. It



will be relevant to quote paragraphs 10 and 11 of the said judgment :

“10. Section 17 seems to correspond in substance to the provisions of Section 20, sub-section (1) of the Industrial Disputes (Appellate Tribunal) Act, 1950, which has now been repealed. Under this section, any money due from an employer under any award or decision of an Industrial Tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision. It is clear that the proceedings under Section 20, sub-section (1) could commence only if and after the workman had obtained an award or decision in his favour. We are inclined to think that the position under Section 17 is substantially similar.

11. In this connection we may also refer to the provisions of Section 33-C of the Industrial Disputes Act (14 of 1947). Sub-section (1) of Section 33-C has been added by Act 36 of 1956 and is modelled on the provisions of Section 17 of the present Act. Section 33-C, sub-section (2), however, is more relevant for our purpose. Under Section 33-C, sub-section (2), where any workman is entitled to receive from his employer any benefit which is capable of being computed in terms of money, the amount at which such benefit may be computed may, subject to any rules made under this act, be determined by such Labour Court as may be



specified in this behalf by the appropriate Government, and the amount so determined should be recovered as provided for in sub-section (1). Then follows sub-section (3) which provides for an enquiry by the Labour Court into the question of computing the money value of the benefit in question. The Labour Court is empowered under this sub-section to appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court, and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case. These provisions indicate that, where an employee makes a claim for some money by virtue of the benefit to which he is entitled, an enquiry into the claim is contemplated by the Labour Court, and it is only after the Labour Court has decided the matter that the decision becomes enforceable under Section 33-C(1) by a summary procedure”.

41. The identical view has been taken in the judgment reported in ***AIR 1987 (SC) 1869 (Samarjit Ghosh Vs. M/s Benett Coleman & Company)*** where the Hon'ble Supreme Court has explained that in what manner Scheme of Section 17 would be read and acted upon, as has been held, a newspaper employee, who claims an amount due to him, has not been paid by the employer, applied to the State Government to recover the said amount if no dispute is raised to the amount due, the Collector will recover the said



amount from the employer and pay to the newspaper employee. Any question of dispute raised by the employer, the Government would call for the dispute by referring to the question to the Labour Court. The *lis* decided by the Labour Court will be the basis for entitlement of the claim amount. It will be relevant to quote paragraph 6 of the said judgment :

“6. When all the provisions of Section 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 employee. 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 will 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”.

42. The Hon’ble Supreme Court has delineated the power and function of Labour Court while exercising jurisdiction under Section 33 C (2) of Industrial Disputes Act in the case of *Municipal Corporation of Delhi Vs. Ganesh Razak (1995) 1 SCC 235*. It will be relevant to quote paragraph 12 of the said judgment :

“12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the



interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution”.

43. In the case of *M/s Bennett Coleman & Co. Ltd. v. State of Bihar & Ors. reported in 2015 (2) PLJR (SC) 257*, the Hon'ble Supreme Court has distinguished difference between power and function of the Wage Board, vis-a-vis the Tribunal, constituted under the Industrial Disputes Act, the Tribunal constituted under the Industrial Disputes Act does not make a recommendation, it passes award, whereas the Wage Board under the Working Journalist Act is only competent to make recommendation in terms of Section 10 of Working Journalist Act and after the notification of the recommendations by the Central Government, if there is any dispute regarding any amount due under the notification, a dispute is raised, the same would be referred to Labour Court under Section 17(2) of the Working Journalists Act, thereafter an award is passed by the Labour Court would be put to execution. It will be relevant to quote paragraph 21 of the said judgment :

“21. A bare reading of the provision would show that the same provides for exercise of the powers of the Tribunal by the Wage Board in the process of making its recommendations in regulating its procedure. The provision does not make Wage Board a tribunal. The Tribunal under



the ID Act does not make recommendations, it passes award; whereas the Wage Board under the Working Journalists Act is competent only to make a recommendation in terms of Section 10 and after the notification of the recommendations by the Central Government if there is any dispute regarding any amount due under the notification, a dispute is raised under Section 17(2) of the Working Journalists Act and thereafter an award is passed by the Labour Court”.

44. In view of the aforesaid discussion in the present case and looking to the observation of the Hon’ble Supreme Court in the contempt matter and other connected matters wherein it has been directed that any dispute arising from the recommendation of the Wage Board would be referred to Labour Court in turn adjudicated in terms of Section 17 (2) of the Working Journalist Act.

45. In such view of the matter, this Court is of the view that the Authority, who has passed the order, wrongly assumed the jurisdiction, has gone beyond his power, as he has directed for recovery of the amount on the basis of calculation furnished by Pankaj Kumar, the respondent no.4. The law is very much settled and clear that the Authority will have jurisdiction to recover an amount which has not been disputed, the moment the dispute has been raised either, on the question of law or on fact, the Authority



ceases of its power to calculate the amount and to proceed for recovery of the said amount, but in that event, it requires the Government would refer the dispute to the Labour Court for adjudication.

46. Accordingly, the order passed by the Joint Labour Commissioner as well as the proceeding of the Recovery Officer are quashed, but this Court gives direction to the Government to refer the dispute under Section 17 (2) of the Working Journalist Act to the court of competent jurisdiction, while adjudicating the dispute, the Labour Court will take into consideration the interpretation as has been given hereinabove and decide the case on day to day basis without giving unnecessary adjournments.

47. This writ application stands allowed to the aforesaid extent.

(Shivaji Pandey, J)

V.K.Pandey/-

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