

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 16275 of 2018
Date of Decision: 25.03.2019**

Jagran Prakashan Limited

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:-HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Aman Dhir, Advocate
for the petitioners.

Mr. Sandeep Vermani, Addl. AG Punjab. With
Ms. Jasleen Sidhu, AAG Punjab.

Mr. J.S. Ghuman, Advocate for respondent No.4.
Mr. Sharvan Sehgal, Advocate
for respondent No.4 in CWP No. 24628 of 2018.

RAJIV NARAIN RAINA, J. (*Oral*)

1. This order disposes of the above mentioned writ petition as well as other 64 connected cases, details of which are mentioned at the foot of the order.

2. The petitioner has approached this Court in challenge to the order dated 13.12.2016 passed by the Assistant Labour Commissioner (ALC) referring two disputes between the petitioning-Jagran Prakashan Limited and its non-journalists and other employees exercising power under Section 17(2) of The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (in short the 'Act'). The

disputes as to money due from the employer arise in the context of the benefits available and claimed under the Majithia Wage Board Award. Indisputably, the disputes fall under Section 17 (2) and not Section 17(1) of the Act.

3. The legal provision conferring jurisdiction on the Assistant Labour Commissioner to make an order of reference to the labour court is cited in the beginning of the impugned order dated 13.12.2016, which is the notification dated 30.06.2016 issued by the Principal Secretary to Government of Punjab, Department of Labour on behalf of the State Government. This notification, as per the impugned order, authorizes ALCs to exercise powers under Section 17(2) while the notification is admittedly restricted to Section 17(1) and does not mention Section 17(2) of the Act.

4. Learned senior counsel Mr. Kaushal for the Newspaper submits that the order is patently without jurisdiction as the Assistant Labour Commissioner, Jalandhar does not possess jurisdiction to pass an order under Section 17 (2) of the Act. He refers to the source of power, which is the order/notification dated 30.06.2016 delegating authority in pursuance to the provisions of Sub-section (1) of Section 17 of the Act conferring authority on Assistant Labour Commissioners in 12 districts of the State of Punjab to act as competent authorities for the purpose of referring disputes for determination by the Courts and Tribunals set up under the Industrial Disputes Act, 1947. The senior counsel further contends that Section 17 of the Act consists of three Sub-sections and power has been delegated only for purposes of Subsection (1) and not to Sub-Section (2) of Section 17 by the notification, which is the

provision of law under consideration in this group of cases. Section 17 of the Act is reproduced below for ready reference:

“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 arrear 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,

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1)].”

5. A plain reading of Section 17 of the Act leaves no manner of doubt that

Sub-section (1) makes provision for recovery of money due from the

employer. This Sub-section is akin to Section 33-C (2) of the Industrial Disputes Act, 1947 and is without prejudice to any other mode of recovery. There is statutory power vested in the State Government to delegate its authority to such authority as it may specify in this behalf. In such cases under Section 17(1), an Assistant Labour Commissioner can issue a certificate of recovery for specified amount to the Collector and the Collector shall proceed to recover that amount in the same manner as recovery by arrears of land revenue.

6. However, no such power of delegation is conferred on the State Government by the Act in Sub-section (2) of Section 17 and it is the State Government alone which can refer a “dispute” falling under Section 17(2) the Act for determination of the amount due. The order/notification dated 30.06.2016 makes no reference to Sub-Section (2) of Section 17 of the Act and, therefore, it is beyond the purview and ambit of the ALC to make reference to a labour court of a matter triable under Section 17(2). To reiterate, Section 17 (2) the Act does provide any authority to the State Government to delegate its powers under Section 17 (2) on any other authority and none is provided for in Subsection (2).

7. State Government has filed its reply under directions of this Court calling upon it to submit an affidavit disclosing its stand on the scope of Sections 17 (1) and 17 (2) of the Act. In paragraph 4 of the reply, it has been loosely explained that powers conferred under Section 17(1) can also include action to be taken under Section 17 (2) of the Act, which are to be exercised as per the powers possessed for making a reference to the Labour Court or

Industrial Tribunal, which are conferred under Section 10 of the Industrial

Disputes Act, 1947. Therefore, it is reasoned in the affidavit that the provisions of Sub- Section (1) and (2) of Section 17 of the Act are to be read collectively and not separately.

8. I am afraid this view does not commend to reason as it would be contrary to the statutory framework of section 17 and the stark difference of fields covered by the two sub-sections of Section 17 and is not the correct interpretation of the law to justify the order dated 13.12.2016 which delegates power on the Assistant Labour Commissioner only under Section 17(1) but not Section 17 (2) of the Act. I would not accept the argument of there being any ambiguity that such power under section 17(1) can be applied or read in Section 17(2) without there being a statutory basis for the broad statement.

9. The respondent-workmen have relied on the decisions of the Allahabad High Court in Civil Misc. Writ Petition No. 11856 of 2018, Pradhan Prabandhak/Unit Head M/s Amar Ujala Vs. State of U.P. and others, 2018 (7) ADJ 715. The case is clearly distinguishable on facts. In that case there was no notification of the UP Government like the restricted one here. The State of UP had in its notification made a blanket law delegating powers of State Government under Section 17 of the Act to specified officers without specifying either Sub-section (1) or (2) of Section 17 of the Act.

10. Mr. Kaushal has referred to the judgment of the Supreme Court in Kasturi and Sons (Private) Limited Vs. N. Salivateswaran and another, AIR 1958 SC 507 in which there is an illuminating discussion on the scope of Section 17 of the Act. He refers to paragraph Nos. 4, 10 & 11 of the judgment. The Court held that power of the authority specified under Section 17 must be found in the provisions of the Act itself and they cannot be

inferred from the accidental circumstances that the specified authority otherwise is a Member of Industrial Tribunal and went to observe as under:

“4. The petitioner's case is that Section 17 of the Act provides only for a mode of recovery of any money due to a working journalist. It does not empower the State Government or the authority specified by the State Government to act as a forum for adjudicating upon the merits of the disputed claim. That being so, the second respondent has no jurisdiction to deal with the merits of the first respondent's claim against the petitioner. In the alternative, the petitioner contends that, if Section 17 confers jurisdiction on the State Government or the authority specified by the State Government to adjudicate upon disputed claims mentioned in the said section, the said section would be ultra vires and void. On these alternative pleas, two alternative relief are claimed by the petitioner. The first relief claimed is that a writ in the nature of the writ of prohibition or other suitable writ or direction be issued restraining the second respondent from exercising any power under Section 17 of the Act and proceeding with the enquiry into the application filed by the first respondent and forwarded to him by the State Government and issue him a certificate. The other relief claimed is that this court should be pleased to order and direct that Section 17 of the Act is ultra vires and void on the grounds set out in the petition.

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 33C of the Industrial Disputes Act (14 of 1947). Subsection (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, 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 33C(1) by a summary procedure.”

11. In view of the above discussion and the legal position in the Act, I have no hesitation in declaring the order dated 13.12.2016 passed by the ALC illegal and without jurisdiction.

12. Accordingly, these petitions are allowed and the impugned reference orders 13.12.2016 are quashed. State is directed to consider making a reference of the disputes under 17(2) of the Act for adjudication before the appropriate Labour Court. State Government would consider the matter within a month of receiving the certified copy of this order.

13. While the order was being dictated in Court, Mr. Sehgal appearing for the workman brought to my notice the short clarification order of the Supreme Court in Avishek Raja and others Vs. Sanjay Gupta and others passed in the main case dealing with challenge to the Majithia Wage Board Award, by which a time frame was fixed by the Supreme Court for the Labour Court to decide the disputes within 6 months. In the present case also the claims of the employees arise from the Majithia Wage Board Award. The same is reproduced for ready reference:

“Having heard learned counsel for the applicant, we are of the view that this miscellaneous application should be disposed of by directing the Labour Courts/Industrial Tribunals in seisin of matters under Section 17(2) of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 to dispose of the same without granting any unnecessary adjournments keeping in mind that the time frame fixed by this Court is six months from the date of reference. We also request the High Court that while entertaining matters against the orders passed by the Labour Courts and Industrial Tribunals, they will keep in

mind the above time schedule so as to ensure that the order of this Court is fully complied with.”

14. The learned Labour Court, when seized of the reference, will follow these directions by fixing a time schedule till disposal, preferably within the same time frame of 6 months to restore peace, tranquility and harmony in the working classes. With these observations and directions, the petitions stands disposed of.

25.03.2019

(RAJIV NARAIN RAINA)

JUDGE

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Whether speaking/reasoned : Yes

Whether reportable : Yes/No

Sr. No.	Case No.	Parties Name
1.	CWP-24638 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
2	CWP-22338-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
3	CWP-22339-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
4	CWP-22340-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
5	CWP-24448-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
6	CWP-24449-2018	JAGRAN PARKASHAN LTD. V/S STATE OF PUNJAB AND ORS
7	CWP-24450-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
8	CWP-24451-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
9	CWP-24452-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
10	CWP-24453-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
11	CWP-24454-2018	JAGRAN PARKASHAN LTD V/S STATE OF

		PUNJAB AND ORS
12	CWP-24455-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
13	CWP-24456-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
14	CWP-24457-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
15	CWP-24458-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
16	CWP-24459-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
17	CWP-24460-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
18	CWP-24461-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
19	CWP-24462-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
20	CWP-24463-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
21	CWP-24464-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
22	CWP-24465-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
23	CWP-24466-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
24	CWP-24467-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
25	CWP-24468-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
26	CWP-24444-2018	M/S DAINIK BHASKAR V/S STATE OF PUNJAB AND ORS
27	CWP-24445-2018	M/S DAINIK BHASKAR V/S STATE OF PUNJAB AND ORS
28	CWP-24446-2018	M/S DAINIK BHASKAR V/S STATE OF PUNJAB AND ORS
29	CWP-24447-2018	M/S DAINIK BHASKAR V/S STATE OF PUNJAB AND ORS
30	CWP-22336-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
31	CWP-24637-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
32	CWP-24636-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
33	CWP-24629-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
34	CWP-24640-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS

35	CWP-24641-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
36	CWP-24642-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
37	CWP-24643-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
38	CWP-24644-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
39	CWP-24645-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
40	CWP-24646-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
41	CWP-24632-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
42	CWP-24625-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
43	CWP- 24647-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
44	CWP- 24648-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
45	CWP- 24649-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
46	CWP-24650-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
47	CWP-24651-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
48	CWP- 24652-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
49	CWP- 24653 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
50	CWP- 24624-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
51	CWP- 24626-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
52	CWP-24627 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
53	CWP-24628 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
54	CWP-22342 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
55	CWP- 22343-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
56	CWP- 22344-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
57	CWP-22346 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
58	CWP- 24623-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS

59	CWP-24631 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
60	CWP- 24635-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
61	CWP-24634 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
62	CWP-24633-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
63	CWP- 24630-2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS
64	CWP-24639 -2018	JAGRAN PARKASHAN LTD V/S STATE OF PUNJAB AND ORS

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(RAJIV NARAIN RAINA)
JUDGE