

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

**CWP No.16578 of 2018 (O&M)
Date of decision: 16.05.2019**

H.T. Media Limited Industrial Focal Point MohaliPetitioner

Versus

Assistant Labour Commissioner and othersRespondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Akshay Bhan, Sr. Advocate with Mr. Alok Kumar, Advocate
and Mr. Abhayveer Sharma, Advocate for the petitioner.

Mr. P.S. Khurana, Advocate for respondent No.3.

B.S. WALIA, J (ORAL)

1. Prayer in the writ petition is for the issuance of a writ in the nature of Certiorari to quash Reference Annexure P-1 dated 12.3.2018 as also for the issuance of a writ in the nature of Prohibition in favour of the petitioner and against respondent Nos.1 and 2 restraining them from taking out proceedings in furtherance of Reference Annexure P-1 dated 12.3.2018.

2. Brief facts of the case leading to the filing of the instant petition are that respondent No.3 while working as IT Executive with the petitioner claimed wages of ₹30,27,575/- with effect from 11.11.2011 to 27.12.2016. The matter could not be resolved at the level of the Assistant Labour Commissioner, SAS Nagar whereupon the Assistant Labour Commissioner, SAS, Nagar in exercise of the powers vested in him under Section 17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as 'the Act') referred the dispute inter se the parties to The Industrial Tribunal-cum-Labour Court, SAS Nagar to adjudicate the claim of respondent No.3 in terms of Section 17 (2) of the Act.

3. The only ground of challenge raised on behalf of the petitioner during the course of hearing at this stage is that the Assistant Labour Commissioner does not have the authority under Section 17(2) of the Act to refer the dispute inter se the parties for adjudication to the Industrial Tribunal-cum-Labour Court and in terms of Section 17(2) of the Act, it is only the State Government which has the power to do so. Section 17(1) to 17(3) of the Act is reproduced as under:

“17. Recovery of money due from an employer.—

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

4. A Coordinate Bench of this Court in CWP No.16257 of 2018 in case titled as Jagran Parkashan Limited versus State of Punjab and others decided on 25.3.2019 while dealing with the provisions of Section 17 (1) and

17(2) of the Act held that under Section 17(1) statutory power has been vested in the State Government to delegate its authority for effecting recovery on behalf of an employee from the employer to such authority as it may specify in said respect and in such eventuality under Section 17(1) of the Act, even the Assistant Labour Commissioner can issue a certificate of recovery for the specified amount to the Collector whereupon the Collector shall proceed to recover the amount in the same manner as arrears of land revenue but that no such power of delegation has been conferred on the State Government under Section 17(2) of the Act and it is the State Government alone which can refer a dispute falling under Section 17(2) of the Act to the Industrial Tribunal-cum-Labour Court for determination of the amount due.

5. No doubt, the impugned order (Annexure P-1) i.e. Reference by the Assistant Labour Commissioner makes reference to the adjudication of the claim in terms of the Section 17(2) of the Act yet no reference is made to the Authority in terms of which the reference has been made by the Assistant Labour Commissioner de hors the mandate of Section 17(2) of the Act. The Coordinate Bench was further pleased to consider the stand of the Government in Jagran Parkashan's case (supra) that the provisions of Sub Section (1) and (2) of Section 17 of the Act were to be read collectively and not separately and that the powers conferred under Section 17(1) of the Act would also include the action to be taken under Section 17 (2) of the Act. However, the aforementioned stand of the State Government was rejected by the Coordinate Bench by holding that the same cannot 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 further that the interpretation of provisions of law was not the correct interpretation of law so as to justify the reference of the dispute by the Assistant Labour Commissioner under Section 17 (1) of the Act.

6. In the circumstances, the Coordinate Bench was pleased to hold that the order passed by the Assistant Labour Commissioner referring the dispute inter se the parties to the Industrial Tribunal-cum-Labour Court was de hors the mandate of Section 17(2) of the Act. Accordingly, the petitions were allowed and impugned reference orders were quashed.

7. Learned counsel for respondent No.3 while not disputing the aforementioned decision or of the same not having been set aside or modified in appeal states that his only prayer is that though the State Government is liable to be directed to consider making the reference of the dispute under Section 17(2) of the Act for adjudication before the appropriate Industrial Tribunal- cum- Labour Court but the same be ordered to be made time bound.

8. I have considered the submissions of parties and am of the considered view that for the reasons as noted above, the writ petition is liable to be allowed. Ordered accordingly. Consequentially, impugned Reference Order Annexure P-1 dated 12.3.2018 is quashed. The State Government is directed to consider making a reference of the dispute inter se the parties under Section 17(2) of the Act for adjudication before the appropriate Industrial Tribunal-cum- Labour Court as early as possible preferably within a period of one month from the date of receipt of certified copy of this order.

9. In the eventuality of reference being made by the State, the Industrial Tribunal-cum-Labour Court would endeavour to decide the dispute in accordance with law as expeditiously as possible preferably within a period of six months from the date, parties put in appearance.

May 16, 2019
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No