

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1631 of 2019

In

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 General Manager (Personnel), Shambhu Nath Pathak, aged about 50 year (Male), Son of Late Braj Bihari Pathak.
 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.

... .. Appellant/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 Appellant/s : Mr. Sanjay Kaushal, Sr. Advocate
Mr. Sanjeev Kumar, Advocate
Mr. Manoj Dubey, Advocate
Ms. Preeti, Advocate
Mr. Ashish Kumar Sinha, Advocate
For the Respondent No. 4 : Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-08-2022

Re: I.A. No. 01/2019 :

For the reasons stated in the aforesaid application, the prayer for condoning the delay of 45 days in preferring this memo of appeal is, hereby, allowed.

The I.A. No. 01/2019 stands allowed.

Re: L.P.A. No. 1631 of 2019 :

Heard Mr. Sanjay Kaushal, the learned Senior Advocate for the appellants assisted by Mr. Manoj Dubey and Sanjeev Kumar, Advocate and Mr. Anil Singh, the learned counsel for the respondent no. 4.

2. The appellants, Jagaran Prakashan Limited, Patna Unit and its employees have challenged the judgment and order dated 25.09.2019 passed by the learned Single Judge in



C.W.J.C. No. 10998 of 2018, allowing the prayer of the appellants in setting aside the order passed by the Labour Commissioner under Section 17(1) of the **Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955** (*in short the Act*), whereby, the learned Single Judge has given certain observations which could have the propensity of limiting the space within which the matter could be agitated by the appellants before the Labour Commissioner after reference by the State Government under Section 17(2) of the Act referred to above.

3. The short facts which led the appellants to approach this Court is that under Section 9, a Wage Board was constituted by the Government which gave its recommendations, pursuant to which a notification was issued by the Government, disclosing the wage structure for the Journalists and non-Journalists. Before such notification came into existence, the recommendations of the Wage Board (Majithia Wage Board) were put to challenge before the Supreme Court which approved the wage structure and the recommendations of the Board. During the pendency of the aforesaid slew of writ petitions before the Supreme Court, the



notification also was issued by the Central Government. Later, when it was found by the employees that each and every aspect of the recommendations of the Majithia Wage Board was not being implemented, several contempt petitions were filed, in which the Supreme Court referred to the provisions contained in Clause 20 (J) of the Award.

4. It was reiterated by the Apex Court that the Majithia Wage Board award was approved by it by Judgment dated 07.02.2014 passed in Writ Petition No. 246 of 2011 making it mandatory for the organizations / institutions to implement such award in its entirety.

5. Clause 20 (J) of the award is being extracted herein for the sake of completeness:

“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”.

(emphasis provided)



6. A plain reading of Clause 20 (J) of the award makes it clear that an employee could exercise his option of retaining the existing pay scale within three weeks of the date of publication of the notification published under Section 12 of the Act., which he shall be entitled to retain and permitted by the organization in which he is working.

7. With respect to the aforesaid clause of recommendations made by the Majithia Wage Board, the Supreme Court clarified that the aforesaid provision in the recommendation read with provisions of the Act made it very clear that the Act had guaranteed the employees their entitlement to receive wages as recommended by the Wage Board and approved and notified by the Central Government under Section 12 of the Act. Such notified wage structure superseded all existing contracts governing wages as may have been enforced at that time. However, it was clarified by the Supreme Court thereafter that in view of Section 16 of the Act, it was always open to the employee to agree to accept any benefit which could be more favourable to him than what was notified under Section 12 of the Act.

8. The Supreme Court further clarified that the Act did not specify anything about the availability of such an



option where an employee was getting lesser wages than the wage structure suggested by the Board and notified by the Government.

9. Thus, the only logical conclusion of the Supreme Court was that if at all such an option was exercised by an employee, namely, the option of receiving lesser wage than the wage suggested by the Board and notified by the Government, it fell in the domain of waiver but in the fact scenario in which such observation was made, such issue did not arise in view of the specific stand of the concerned employees in that case with regard to the voluntary nature of undertakings furnished by them.

10. Mr. Kaushal, the learned senior Advocate, therefore, submits that in the event of any employee accepting a lesser wage and emoluments, it was his own waiver of the right to receive such wages unless he could prove before the authorities that such acceptance was not voluntary but was thrust upon him because of any coercion of any kind.

11. In the present case, the respondent no. 4 was transferred from Gaya to Jammu. After the notification of the wage structure in accordance with the recommendations of the Majithia Wage Board, no protest was made by the



respondent no. 4; rather it was accepted by him without any demur. However such an issue was raised by respondent no. 4, according to the learned counsel for the appellants, after about six years of waiving his right to receive emoluments according to the wage structure notified by the Government. The claim petition raised by respondent no. 4 was changed at different stages and last of his projected claims was accepted by the Joint Labour Commissioner but without adjudicating the amount due or taking into account the objections of the appellants.

12. This led the appellants to approach this Court with a plea that the Assistant Labour Commissioner was not within his jurisdiction to pass such an order, accepting the claim of respondent no. 4 without adjudicating the amount due to him and payable by the appellants.

13. The learned Single Judge, after going through the recommendations of the Wage Board, the notification of the Central Government and the Judgments of the Supreme Court as also the provisions contained in Section 17(1) and (2) of the Act, found that the order so passed by the Assistant Labour Commissioner was without jurisdiction and, therefore, not sustainable. The order was thus set aside. While doing so,



it has been urged on behalf of the appellants, the learned Single Judge meandered through the various provisions of the Act and noted down the rationale and spirit behind the constitution of the Wage Board, its recommendations and its subsequent acceptance by the State Governments, namely, to prevent any unfair treatment to Journalists and working Journalists in various publishing houses. It was also observed by the learned Single Judge that insisting for lesser wage to an employee than what has been allowed by the notification of the Central Government, would be against the public policy. With this explanation, the matter was remitted to the Government for referring the dispute under Section 17(2) of the Act with a clear stipulation that while adjudicating the dispute, the Labour Court shall take into consideration the interpretation as given by the learned Single Judge and he shall decide the matter on day-to-day basis without giving any unnecessary adjournments.

14. Mr. Kaushal, the learned senior Advocate has raised a positive objection with respect to the aforesaid conditional remittance urging that with such an explanation, which was neither required nor was asked for by the appellants, would heavily diminish the space for the



appellants to raise their case and present their cause.

15. The primary contention of the appellants is that the objection by the respondent no. 4 was raised after six years of his accepting the earlier emoluments and that also appeared to be a retaliatory action by him as he was piqued by his inter-state transfer.

16. It has also been urged on behalf of the appellants that there was no coercion and that the initial acceptance of wage of respondent no. 4 was voluntary. It has, therefore, been submitted that assuming but not admitting the fact that such an issue of voluntary waiver might be questioned by respondent no. 4, circumscribing the whole process of adjudication by remitting the matter with a positive intendment that any lesser wage demanded and given, voluntarily or involuntarily to an employee, would be against the public policy.

17. This objection is primarily on two grounds; one being that it was not the issue before the learned Single Judge and the second that it went in teeth of the explanation / elucidation given by the Supreme Court in one of the contempt petitions where it was clearly stated that such acceptance of lesser wages and remuneration would be in the



domain of waiver which can only be factually determined, if situation so arises.

18. In the case before the Supreme Court, there was no dispute with respect to the voluntary nature of the waiver of some of the employees.

19. Thus, in sum and substance, the only objection of the appellants is the observation of the learned Single Judge that any wage structure lesser than what has been notified by the Government would be against the public policy and that this principle be kept in mind by the Labour Court while adjudicating the issue between the parties.

20. As opposed to the aforesaid contention, Mr. Anil Singh, the learned Advocate for respondent no. 4 submits that the appellants are being unnecessarily captious and fearful with respect to the issue of the nature of waiver (voluntary or involuntary). Once a matter is remitted to the concerned court by a superior court, all the issues are dealt with threadbare and any side observation of the superior court ought not to be taken as circumscription of the powers of the Court to decide the issue in correct perspective. If the fears of the appellants are non-existent, it has been urged by Mr. Singh, that any modification of the order would unnecessarily tantamount to



dilution of the explanation by the learned Single Judge with respect to various other provisions of the Act.

21. After hearing the arguments raised on behalf of the appellants and the respondent no. 4, we find that the learned Single Judge rightly set aside the order passed by the Assistant Labour Commissioner under Section 17(1) of the Act on the ground that such jurisdiction was assumed by him without any observance of the procedure as mandated under Section 17 of the Act.

22. Section 17 of the Act is being extracted hereinbelow for ready reference:

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 subsection (1).

23. The Supreme Court has found the provisions contained in Section 17 to be akin to the provisions of Section 33 (C) of the Industrial Disputes Act after the amendment of Section 20(1) of the aforesaid Act. (Refer to ***A.I.R. 1958 (SC) 507 (Kasturi and Sons (Private) Ltd. Vs. N. Alivateswaran &***



Ors.; A.I.R. 1987 (SC) 1869 (Samarjit Ghosh Vs. M/S Bennett Coleman & Company).

24. The aforesaid observations make it very clear that when the provision of Section 17 is seen in its entirety, it would only beckon the State Government to go for recovery of the amount which an employee has not been given, but not before such amount is determined. If there is no dispute with respect to the amount in question, it could be recovered as land revenue, but if there is any dispute with respect to the amount due, the State Government would be under an obligation to call for an adjudication of the dispute by referring the question to the Labour Court. After the Labour Court decides the issue, such decision shall be forwarded to the State Government who shall make the reference and only thereafter a direction could be given for recovery of such amount by the Collector. Thus, setting aside of the order accepting the claim of respondent no. 4 and directing for its recovery as land revenue straightaway, without adjudication of the dispute by referring it to the Labour Court, was bad in the eyes of law.

25. However, when the matter was remitted to the State Government to take a call with respect to the reference



to the Labour Court, we find that the observation of “public policy” is uncalled for as it could tie the hands of either of the parties.

26. Individual cases of employees would not fall within the domain of public policy. Though public policy would stand offended even in case of an individual employee in the event of accepting a lesser emolument or wages but when it is involuntarily, i.e., under coercion or threat of removal or launching of other proceedings against him. Thus, this aspect is also justiciable and falls within the adjudicatory realm of the Labour Court. Holding out a blanket observation that any insistence on acceptance of a lesser wage would be against the public policy, would preclude the appellants to even raise the issue that the waiver by the respondent no. 4 was voluntary, and thereby foreclosing any argument on behalf of the appellants.

27. This aspect of the matter, it has been rightly urged by Mr. Kaushal, is offending. He, therefore, submits that the order passed by the learned Single Judge be qualified/modified to the extent that the Labour Court be not bound by such observations and decide the issue independently even with respect to the involuntariness of



acceptance of lesser wage by respondent no. 4.

28. It is needless to reiterate that respondent no. 4 shall have every right before the Labour Court, in that event to contest that such acceptance of lesser wages for six years by him was not voluntary.

29. For the reasons stated above, we clarify that the Labour Court shall decide the issue independently of the observations which have been made by the learned Single Judge with respect to public policy regarding acceptance of lesser wages and shall decide the matter in light of the provisions of the Act.

30. The directions of the learned Single Judge to decide the case on day-to-day basis, remains inviolate and, therefore, such direction subsists.

31. With the afore-noted observation/direction, the appeal stands allowed and disposed off.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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