

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **RESERVED ON -2nd September, 2022**
PRONOUNCED ON -2nd November 2022

+ **W.P.(C) 7926/2022, CM APPL. 24158/2022, CM APPL. 32932/2022
& CM APPL. 35957/2022**

NNS ONLINE PVT LTD. Petitioner
Through: **Mr.Vidit Garg and Ms.Shipra Mishral, Advocates**
versus

GOVT. OF NCT DELHI AND ANOTHER Respondents
Through: **Mr.Sunil Kumar, Adv. for respondent no.1 with Mr.Manish Kumar Thakur, Inspecting Officer, Labour Deptt., GNCTD.**
Respondent no.2 in person.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present writ petition has been filed challenging the order dated 25.03.2022 passed by Learned Presiding Officer, Labour Court, Rouse Avenue, New Delhi, vide which the Learned Labour Court partly allowed the application of the Respondent workman (claimant therein) under order XII Rule 6, CPC, in the petition bearing LIR No. 1260/19, under Section 17 (2) of the Working Journalist and Other Newspaper

Employees (Conditions of Service) and Misc. Provisions Act, 1955, (W.J. Act) filed on behalf of the workman, seeking issuance of Recovery Certificate against statutory dues and *inter alia* held that there is no requirement of leading any evidence regarding the relationship of employer and the employee.

2. Following two issues were framed to be adjudicated and determined:
 - (i) Whether employee - employer relationship exists between the claimant Sh. Chandra Prakash Pandey S/o Late Sh. Satya Nath Pandey (Age-44 years, Mobile No.9013121141) and the respondents/ managements?
 - (ii) And if so, claimant Sh. Chandra Prakash Pandey S/o late Sh. Satya Nath Pandey is entitled to difference of arrears of wages amounting Rs.84,97,158.76/- for the period from 01.01.2006 to 01.07.2018 as per Majithia Wage Board recommendation under Working Journalist and Other newspaper Employees(Conditions of Service) and Misc. Provisions Act, 1955, and if so, what directions are necessary in this regard?
3. During the proceedings, respondent workman preferred an application under Order XII, Rule 6, CPC seeking an order on admission qua the management for issuance of recovery certificate as per the statement of claim filed on behalf of the workman. Learned Labour Court vide the Impugned Order has partly allowed the application of the respondent workman under Order XII, Rule 6, CPC, only to the limited extent of

the 1st issue and disallowed the same with respect to the 2nd issue and *inter alia* held as under:

“10. Accordingly application is disposed of and decided to the extent that there is no controversy remained to be adjudicated on the issue of employee employer relationship between the management and workman and no evidence is required to be led. There is no admission by management on the issue of dues as referred in para 9 of claim petition by the claimant alleging that he is entitled to recover arrears as on 01.01.2006 to 01.07.2018 amounting to Rs. 79,17,840.25 and dues from January, 2008 to November, 2011 amounting to Rs. 5,79,358.51. Totalling Rs.84,97,158.76. Though there is admission qua employee and employer relationship between the parties but there is noun equivocal and unambiguous admission on the part of management regarding arrears to the tune of Rs. 84,97,158.76 which is to be proved by leading evidence by both the parties. In such circumstances, the application in hand cannot be allowed in totality. It is made clear that no evidence is required to be led on the issue of employer employee relationship. Application is accordingly disposed of.”

4. Thus the main grievance of the petitioner management is that vide the Impugned Order, the Learned Labour Court held that there exists relationship of employer -employee qua the parties and closed petitioners' opportunity to raise objections and lead further evidence with respect to the same.

CONTENTIONS OF THE PETITIONER/ MANAGEMENT

5. Learned Labour Court had no jurisdiction to decide the present matter as Respondent No. 2 is not a Workman and the impugned order suffers from illegality on the face of the record. Reliance is placed on the judgement dated 05.05.2006 of the Supreme Court in ***“Municipal***

Council, Sujanpur vs. Surinder Kumar”, (2006) 5 SCC 173, whereby it was observed that the High Court's jurisdiction to issue a writ of certiorari though is limited, can be issued if there is an error of law apparent on the face of the record.

6. Impugned order passed by the Learned Labour Court is perverse and not maintainable as the issue of employer-employee relationship qua the parties still remains an unsettled issue in light of the following salient reasons:

- Respondent no. 2/ workman is claiming dues for the impugned period w.e.f. 2008 to 2018 whereas, he voluntarily resigned from the services of the petitioner management in 2013.
- Respondent no. 2/ workman after tendering his voluntary resignation withdrew his PF and started running his own fortnightly newspaper namely ‘Vikas Vaibhav’ registered in year 2014, bearing RNI (Registered Newspaper India) 22014/57173 which is material on record.
- Further respondent no. 2/ workman did not disclose before the Learned Court that he was also providing his services to ‘Ravivar Dilli Magazine’ during the impugned period.

7. Learned Labour Court failed to take into consideration that Respondent No. 2 claimed dues only on account of Majithia Wage Board Recommendation, under Working Journalist Act, which requires him to be a Newspaper Employee i.e. Working Journalist or Non-Journalist Newspaper Employee of a Newspaper Establishment.

8. Learned Labour Court failed to consider that Respondent No. 2 moved an application u/s 11(3)(b), ID Act seeking his employment documents from M/S NSS Events and Exhibitions Pvt. Ltd., which is neither involved in production or publication of newspaper and nor in conducting news agency. The primary objective of M/S NNS Events and Exhibition Pvt. Ltd. is to organise Seminars, Exhibitions & Events and shows. Petitioner submits that ‘News Agency’ as per Clause 2 (6), Chapter XX, Majitha Wage Board Recommendation means an establishment conducting any news agency or syndicate, that is to say, a news agency in an undertaking of which the principle objective is to gather or collect news and news material and to distribute it to a group of news enterprises and, in exceptional circumstances, to provide individual with a view to providing them as complete and impartial news service as possible, against payment with and under condition compatible business laws and usage.

CONTENTIONS OF THE RESPONDENT NO. 2/ WORKMAN

9. The present dispute is covered under the provisions of sections 13, 16A, 17-2 of the Working Journalist and Other Newspaper Employees (Condition of Services) And Misc. Provisions Act, 1955. R2/ workman was appointed as “News Coordinator” by the petitioner and was issued ID for the said post with seal & signature of one of its directors namely Sh. Rajesh Gupta. The authority letter dated 03.12.2015 issued by Sh. Rajesh Gupta in favour of the workman to appear on behalf of the petitioner management before Sh. R.M. Parthsarthy, Learned Authority

under the Payment of Gratuity Act, 1972, West District, Labour Department, exhibited by the workman in his evidence as Ex.WW1/6 and Ex.WW1/7 reflects admission qua the petitioner that the respondent workman is an employee of the petitioner. Respondent workman submits that his service conditions were never changed by the petitioner. It is stated that the service conditions are governed by the Working Journalist and Other Newspaper Employees (Conditions of Service) and Misc. Provisions Act, 1955 which Act has been upheld by a Constitutional bench of the Supreme Court in “*Express Newspapers (Private) ... vs The Union of India And Others*”. AIR 1958 SC 578.

10. It is the contention of the respondent workman that the petitioner has filed the present petition without challenging the admitted facts as admitted by the petitioner management in its written statement 04.07.2019 to the statement of claim of the workman in LIR No. 1260/2019. In the said written statement, petitioner has admitted that the workman has resigned from his services on 01.12.2013.
11. The authorised representative of the management in its application dated 12.05.2016 filed before the Learned Authority GNCTD admitted that the workman herein is an employee of said newspaper establishment. The same is reflected in Ex WW 1/7 (OSR).
12. The appeal filed before Learned Appellate Authority under the Payment of Gratuity Act, 1972, titled “*M/S NNS Online Pvt. Ltd. vs. Sh. A.D. Josh*” reflects admission qua R2/ workman being an

employee of said newspaper establishment. The same is reflected in Ex WWI/8(OSR).

13. The work of the workman was to edit news and was thus both manual and technical in nature. Therefore the workman is covered as per the provisions contained under section 2 (s), 2 (2) & 25 (f) of the ID Act 1947 and section 3 of the WJ Act.
14. The issue with respect to forceful resignation of the workman dated 01.12.2013 and the employer- employee relationship with the petitioner w.e.f. 01.01.2006 to 30.06.2016 has already been decided in favor of the workman as the “Order of Reference” dated 17.04.2017 was only in terms of the illegal termination dated 30.06.2016 and not whether respondent no. 2 is a “workman” or not. Moreover, the petitioner did not challenge the “Order of Reference” timely and it is settled law that petitioner cannot challenge the “Order of Reference” and parties cannot be allowed to travel beyond the pleadings in this stage of case.
15. Respondent workman thus prays that the present petition may be dismissed with exemplary costs being not maintainable in the eyes of law.

ANALYSIS AND FINDINGS

16. The jurisdiction of the writ Court while exercising jurisdiction to examine the order passed by the learned Labour Court in such a manner is though wide but has to be exercised with circumspection.

The writ Court can interfere only if there is manifest illegality or perversity in the order of the learned Labour Court. This Court cannot substitute its view with that view of the learned Labour Court merely because another view could have been taken. In the present case the petitioner-management has challenged an order whereby the learned Labour Court has merely partly allowed the application under Order XII Rule 6, CPC on the point of employee-employer relationship.

17. Though, the W. P. (C) No. 2726 of 2020 challenging the award dated 20.02.2020 passed in LIR No. 1313/2017 has been allowed. However, in that case, it has inter alia been held that respondent had duly resigned from the service and same was duly accepted. The contention of the respondent that the resignation was taken forcibly and he was illegally terminated was rejected by this Court. It is a matter of record that it's an admitted case of the petitioner-management that the respondent worked with them from 01.08.2009 till 01.12.2013 i.e. the date of resignation. However, the plea of the respondent is that he remained in employment from 01.01.2006 to 30.06.2016. The issue that whether the respondent was a 'workman' as per definition of the I.D. Act or a 'working journalist' as per W.J. Act is yet to be decided. However, the finding of the learned Labour Court that the petitioner-management itself has admitted that the respondent resigned from the service on 01.12.2013 and therefore he remained employed with them cannot be faulted. Even otherwise the learned Labour Court has left open the question of entitlement of the respondent open.

18. Thus, the present writ petition is disposed of with the following direction:

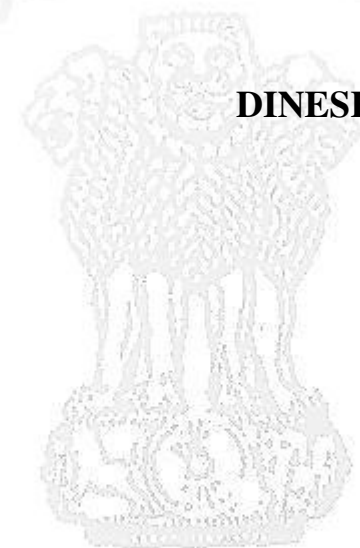
(1) The question that whether the respondent is a 'workman' as per the Industrial Disputes Act, 1947 or a 'working journalist' as per W. J. Act is left open to be decided.

19. With these directions, the present writ petition along with pending applications stands disposed of.

DINESH KUMAR SHARMA, J

NOVEMBER 2, 2022

Pallavi



न्यायमेव जयते