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

Date of Decision: 27th January, 2022

+ **W.P.(C) 8550/2018**

BUSINESS BHASKAR NEWSPAPER Petitioner

Through: Mr. Gopal Jain, Sr. Advocate with
Mr. Rahul Malhotra, Mr. Anshul
Gupta, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through: Mr. Soumyajit Pani, Advocate for R-4
to 15.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

Facts-

2. The present petition challenges the impugned order dated 2nd July, 2018 in ***F.No. F-24 (06) WJA/CD/88-98 & 106/2017/01-06*** passed by the Id. Dy. Labour Commissioner Central District, New Delhi (*hereinafter* “*Authority*”) by which the Authority has framed the terms of reference and referred the dispute relating to arrears of salary of the Respondents/Workmen to the Labour Court, Dwarka Court complex, Central District. Vide the said order, the Authority has referred the claims of the Respondent No.4-15 relating to amount due, arising out of implementation of recommendations of Majithia Wage Board given under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter* “*Working*”).



Journalists Act”).

Background history of the dispute-

3. Two Wage Boards were constituted by the Government on 24th May 2007 under Sections 9 and 13C of the Working Journalists Act for making recommendations in respect of revision of wages of Journalists and Non-Journalists Newspaper Employees. Both the Wage Boards were headed by Justice Gurbaksh Singh Majithia, Retired Judge of the Bombay High Court. The said Wage Boards (*hereinafter “Majithia Wage Board”*) made their recommendations and the said recommendations were accepted and notified by the Government vide Notification NO. S.O.-2532(E) dated 11th November 2011. The recommendations of the Majithia Wage Board were challenged in *APB Pvt. Ltd. v. UOI & Ors. (2014) 3 SCC 327* wherein the Supreme Court vide a detailed judgment dated 7th February 2014 held the recommendations to be valid in law based on genuine and acceptable considerations. The conclusion of the Supreme Court in the said judgment is as under:

“72. Thus, it is the prerogative of the Central Government to accept or reject the recommendations of the Wage Boards. There is no scope for hearing the parties once again by the Central Government while accepting or modifying the recommendations, except that the modifications are of such nature which alter the character of the recommendations and such modification is likely to affect the parties. The mere fact that in the present case, the Government has not accepted a few recommendations will not automatically affect the validity of the entire Report. Further, the Government has not accepted all those suggestions including those pertaining to



retirement age, etc. as these are beyond the mandate for which the Wage Boards were constituted. Regarding fixation of pay, assured career development, there have been proposals in the recommendations which are in the manner of providing higher pay scale after completion of certain number of years which cannot be treated as time-bound promotion.

73. 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 with no order as to costs

74. In view of our conclusion and dismissal of all the writ petitions, the wages as revised/ determined shall be payable from 11-11-2011 when the Government of India 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 instalments within a period of one year from today and continue to pay the revised wages from April 2014 onwards."

4. Thus, wages of all working journalists and non-journalist employees in terms of the Board's recommendations were payable with effect from 11th November, 2011. Thereafter, since the Majithia Wage Board recommendations were not followed, **Contempt petition No. 411/2014** in **WP(C) 246 of 2011** titled **Avishek Raja v. Sanjay Gupta** was filed before the Supreme Court. The Supreme Court vide order dated 19th June 2017 directed that all complaints with regard to non-implementation of the Majithia Wage Board Award be filed under section 17 of the Working Journalists Act. The relevant part of the order reads as under-



“27. Having clarified all doubts and ambiguities in the matter and upon holding that none of the newspaper establishments should, in the facts of the cases before us, be held guilty of commission of contempt, we direct that henceforth all complaints with regard to non-implementation of the Majithia Wage Board Award or otherwise be dealt with in terms of the mechanism provided under Section 17 of the Act. It would be more appropriate to resolve such complaints and grievances by resort to the enforcement and remedial machinery provided under the Act rather than by any future approaches to the Courts in exercise of the contempt jurisdiction of the Courts or otherwise.”

5. In the third round before the Supreme Court, **M.A. No. 171 of 2019** came to be filed by in the **Contempt Petition No. 411/2014** titled **Avishek Raja v. Sanjay Gupta** which was disposed of by the Supreme Court vide order dated 28th Jan 2019 in the following terms:

“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 Courts 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. The miscellaneous application is, accordingly,



disposed of.”

6. A conjoint reading of the above judgement and orders of the Supreme Court leaves no doubt that these matters relating to the implementation of the recommendation of the Majithia Wage Board's recommendation ought to be disposed of and decided in an expeditious manner inasmuch as these are related to the journalists whose wages are recommended by the Majithia Wage Board. It is in this backdrop that the objection as to jurisdiction is to be considered by this Court in the present case.

7. The reference out of which the present petition arises is one such matter where the Respondent Nos. 4 to 15 who were working as journalists with the Petitioner/Management which publishes the Business Bhaskar Newspaper, seek arrears of wages for the period 11th November, 2011 till 30th April, 2014 in view of the recommendations of the Majithia Wage Board. Respondents 7,8,9,11, and 13 were working in Delhi but upon being transferred, they had resigned. Respondents 4,5,6,10,12,14, and 15 were posted in Delhi till 1st August 2013 but were thereafter transferred to Jaipur.

Submissions-

8. Management's challenge to the impugned order is two-fold. Firstly, Mr. Gopal Jain, Id. Senior Counsel assisted by Mr. Rahul Malhotra, Advocate, appearing for the Management, submits that insofar as the Respondent Nos. 7,8,9,11,13 are concerned, since they were working at office of the newspaper at **132- Tribhuwan Complex, Iswar Nagar, Mathura Road, New Delhi**, the matter should have been referred to the Labour Court having jurisdiction over the South Delhi District and not the Labour Court having jurisdiction over the Central Delhi District.

9. Second, Mr. Gopal Jain submits that insofar as the Respondent Nos.



4,5,6,10,12,14, &15 are concerned, the matter ought to have been filed before the Labour Courts at Jaipur and the Government of NCT of Delhi (GNCTD) had no jurisdiction to frame the reference with regard to these Respondents. Mr. Rahul Malhotra, Id. Counsel, relies upon Rule 36 of the Working Journalists (Condition of Service) and Miscellaneous Provisions Rules, 1957 (*hereinafter “Working Journalists Rules”*) to argue that as per the said Rule the application under Section 17 of the Working Journalists Act has to be made to the Government of the State where the Central Office or the Branch Office of the Newspaper Establishment, in which the employee is employed, is situated.

10. Mr. Gopal Jain further submits that the law in this regard is well settled in the judgment of this court in ***Braham Prakash v. GNCTD 2008 (2) SLR 624*** where the Court applied the *situs test* and held that the reference would be liable to be made to the Labour Court where the workmen was last employed. He submits that the claims in this case were filed on 13th September, 2017 and admittedly the said Respondents were transferred to Jaipur on 8th August, 2013. Since, on the date the claims were filed, they were working in Jaipur, the matter ought to be filed before the Labour Court at Jaipur and not the one situated at Delhi. Mr. Jain, Id. Sr. Counsel has relied upon the following four judgments to argue that the situs of employment was in Jaipur.

- i. ***Shri Shailender Kumar v. The Secreatary (Labour) & Anr.*** (2016) 148 FLR 39;
- ii. ***Braham Prakash v. GNCTD & Anr.*** 2008 (2) SLR 624;
- iii. ***Hansraj Singh v Managing Director, Modern Food Industries (India) Ltd.*** (2009) 163 DLT 794;



iv. *J Balaji through General Secretary, Delhi Labour Union v. M/s The Hindu*, Rouse Avenue Court, L.C. No. 07/2016.

11. On the other hand, Mr. Soumyajit Pani, Id. Counsel for the Workmen submits that the claim was filed by the Workmen pursuant to the implementation of the recommendations of the Majithia Wage Board which was upheld repeatedly by the Supreme Court. The period for which the wages have been claimed is from 11th November, 2011 to 30th April, 2014. During this aforesaid period, out of the period of 31 months, for almost 23 months they were working in Delhi office of the Management. Thus, a substantial period for which the wages have been claimed by the said Respondents was served while they were working in Delhi. Therefore, it is submission that a substantial part of the cause of action arose in Delhi, and that the territory of Delhi has a direct nexus with the dispute at hand. It is on this ground he contends that the reference made by GNCTD should not be interfered with by this Court.

12. He further submits that the proceedings before the *Pilot Court/ POLC-XVII- Dwarka Courts, New Delhi* (hereinafter “Labour Court”) would show that since 13th July, 2018, when notice was first issued by the Labour Court to the Petitioner/Management, the Management has been evading service. He places reliance upon orders dated 13th July, 2018, 20th July, 2018, 25th July, 2018, 3rd August, 2018 and 10th August, 2018 passed by the Labour Court. It is only on 10th August, 2018 that the Management appeared after the Management was served by way of Affixation by the order of the Labour Court. Despite the fact that the Management always had knowledge of these proceedings, as is clear from the filing of the present writ petition which was filed by the Management itself on 28th July, 2018,



they delayed appearing before the Labour Court.

13. Mr. Pani relies upon the judgment and orders of the Supreme Court in *ABP Pvt. Ltd. (supra)* and *Avishek Raja (supra)* to argue that the intention of the Supreme Court was to ensure expeditious disposal of the claims arising out of the recommendations of the Majithia Wage Board. However, in the present case it is seen that the claim of the journalists for the period 11th November, 2011 to 30th April, 2014 is yet to be adjudicated by the Labour Court. He submits that an order dated 7th February, 2019 was passed by this Court directing that the Labour Court shall not pass final order till the next date of hearing. The said interim order was further extended vide the order dated 17th July 2019. Vide order dated 13th November 2019 this Court has directed the Labour Court not to pass final order during the pendency of the present petition due to which, though the evidence has concluded before the Trial Court, the final order has not yet been passed.

14. Insofar as the issue concerning Rule 36 of the Working Journalists Rules is concerned, Mr. Pani, relies upon the judgment of the Supreme Court in *Samarjit Ghosh v. Bennett Coleman and Co. & Anr. 1987 (3) SCC 507* where in respect of Rule 36, the Supreme Court has observed that the said Rule is to be interpreted in favour of the Workmen.

15. Mr. Soumyajit Pani, Id. Counsel further argues that GNCTD was indeed the appropriate Government to make the reference and relies upon the registration issued by the Registrar of Newspapers to argue that the newspaper is also having registration under the *Press and Registration of Books Act, 1867* which is issued in Delhi. He has also placed on record various copies of the newspaper of the Petitioner/Management to show that it is published from Delhi.



16. He contends that the cause of action test and direct nexus test would apply to the case at hand. Thus, in addition to the Government of Rajasthan, that was the appropriate State Government to make the reference as per Rule 36 of the Rules, even GNCTD had the authority to make the reference in the case applying the *cause of action test*. He submits that the subject matter of the present dispute substantially arose in Delhi as out of the 31 months for which the arrears are claimed, the Respondents were working in the Delhi Office of the Management for 23 months. To support his contention, he relies upon the judgment of the Supreme Court in ***Bikash Bhushan Ghosh v. Novartis India Ltd. (2007) 5 SCC 591*** wherein, he argues that the Supreme Court has held that the test of cause of action provided in section 20 CPC is squarely applicable to industrial disputes.

17. Mr. Gopal Jain, Id. Senior counsel and Mr. Rahul Malhotra, Id. counsel for Management on the other hand submit that this judgment in ***Bikash Bhushan Ghosh (supra)*** would not have any applicability and was purely on the facts of the said case. In the said case, the employee was transferred from West Bengal to Bihar but the workman did not accept the transfer and was thus terminated, it was under those circumstances that the Supreme Court held that the cause of action would arise in West Bengal.

Analysis-

18. Heard Id. Sr. Counsel for the Management and Id. Counsel for the Workmen. The claims in this petition have been filed by 12 journalists working with Business Bhaskar Newspaper. The journalists filed their claims before the Labour Court in September 2017 and the said petitions are at the stage of final arguments. The jurisdiction of the GNCTD to make the reference *qua* the Respondent No. 4,5,6,10,12,14, and 15 last posted in



Jaipur is under challenge. In addition, *qua* Respondent Nos. 7,8,9,11 &13, the stand of the Management is that the Labour Court in South Delhi District ought to adjudicate the claims and not the Labour Court in Central District, as the journalists were working in the Mathura Road office of the Management which falls in South Delhi District.

19. Thus, the short issue in this case is whether the reference which was made by the Delhi Government is lacking in jurisdiction or not. Rule 36 of the Working Journalists Rules reads as under:

“Application under section 17 of the Act- An application under section 17 of the Act shall be made in Form C to the Government of the State where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed, is situated.”

20. Under section 2(c) Working Journalists Act, a newspaper employee is defined as under:

“(c) “newspaper employee” means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment;”

21. Further, section 2(d) Working Journalists Act defines a newspaper establishment as under:

“(d) “newspaper establishment” means an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate and includes newspaper establishments specified as one establishment under the schedule; Explanation- For the purpose of this clause,-



(a) Different departments, branches and centres of newspaper establishments shall be treated as parts thereof;

(b) A printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper;”

22. Whenever any amount is to be recovered by a newspaper employee from an employer, an application is to be made to the State Government for recovering of the said amount. The State Government, if satisfied that any amount is so due, issues a certificate under Section 17(1) of the Working Journalists Act and, in case of dispute as to the amount due, the same is to be referred under Section 17(2) Working Journalists Act to Labour Court constituted under the Industrial Disputes Act, 1947. Section 17 of the Working Journalists Act reads as under:

“Recovery of money due form 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 authorized 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 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 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 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)."

23. For the purposes of adjudicating dispute between newspaper employees and their employer under the Working Journalists Act, the claim has to be filed in Form C with the State Government. The said Form C is set out herein below:

***"FORM C
APPLICATION UNDER SUB-SECTION (1) OF
SECTION 17 OF THE WORKING JOURNALISTS
(CONDITIONS OF SERVICE) AND MISCELLANEOUS
PROVISIONS ACT, 1955
[See rule 36]***

To

The Secretary to the Government of (here insert the name of the State Government)

Department of (here insert the name of the Department which deals with labour matters) (here insert the name of the place where the headquarters of the State Government are situated).

Sir,

I have to state that I Shri/Shrimati/Kumari Son/widow/daughter of a working journalist, was entitled to receive from (here insert the name and address of the newspaper establishment) a



sum of Rs..... on account of (here insert gratuity, wages, etc., as the case may be), payable under the Working Journalists (Conditions of service) and Miscellaneous Provisions Act, 1955 (45 of 1955).

I further state that I was appointed by Shri..... by an instrument dated to receive the amount of the gratuity on behalf of Shri/Kumari.....

I further state that I served the said newspaper establishment with a demand notice by registered post on..... for the said amount which the said newspaper establishment has neither paid nor offered to pay to me even though 15 days have since lapsed. The details of the amount due are mentioned in the statement hereto annexed.

*I request that the said sum may kindly be recovered from the said newspaper establishment under section 17 of the said Act, and paid to me as early as possible. *[I have been duly authorized in writing by (here insert the name of the newspaper employee) to make this application and to receive the payment of the aforesaid amount due to him].*

**[I am a member of family of late (insert the name of the deceased newspaper employee), being his (here insert the relationship) and am entitled to receive the payment of the aforesaid amount due to late here insert the name of the deceased newspaper employee)]*

**To be struck out when the payment is claimed by the newspaper employee himself.*

Station.....

Signature of the applicant

Date.....

Address.....

.....”

24. The Working Journalists Act does not define State Government for the purpose of the Act. Section 2(a) of the Industrial Disputes Act, 1947



defines appropriate Government. As per Form C, the address of the newspaper establishment which needs to be entered into the said Form would be the relevant newspaper establishment from whom the Workmen are to receive the amounts claimed. Moreover, Rule 36 of the Working Journalists Rules requires the application under section 17 of the Working Journalists Act to be made to the State Government where Branch Office of the newspaper establishment situated in which newspaper employee is employed.

25. In the present case, for a substantial period during which the arrears are being claimed, the Workmen were working in Delhi which as per the explanation to Section 2(d) of the Working Journalists Act would be the newspaper establishment for the said purpose. The explanation to section 2(d) clarifies that different departments, branches and centres of newspaper establishment shall be treated as parts of the newspaper establishment itself. Thus, the relevant Branch Office of the newspaper establishment in which the newspaper employee is employed would be such office where the employee is employed during the relevant period for which the claim is made and not necessarily the Branch Office where the employee is working on the date when the claim is made. Thus, for the months when the Workmen were serving in Delhi, the State Government would be GNCTD. For a few months for which the wages are being claimed, the Workmen were working in Jaipur as well. Thus, both the Labour Courts in Jaipur and in Delhi would have jurisdiction to deal with the claims/disputes relating to wages of the Workmen. It is the admitted position a substantial portion of the arrears are being claimed for the period when the Workmen were working in Delhi and, thus, the Delhi Branch of the newspaper



establishment would also be the relevant Branch Office.

26. Apart from the fora provided in Rule 36, the question would also be whether the State Government to make a reference would also include the State where the cause of action has arisen under Section 20 CPC. The Supreme Court in ***Samarjit Ghosh v. Bennett Coleman and Co. & Anr.*** **1987 (3) SCC 507** held that Rule 36 of the Working Journalists Act is to be construed in favour of the Workman and not in favour of the Management. The relevant extract reads:

“4. The question whether the Government of West Bengal was empowered to make a reference of the dispute between the appellant and the employer company must be determined by the provisions of the Act in their application to the facts of this case. Section 17 of the Act makes provision for the recovery of money due to a newspaper employee from his employer. Sub-section (1) requires that an application by the newspaper employee complaining that an amount due to him has remained unpaid by the employer should be made to the State Government, and provides that if the State Government is satisfied that any amount is so due it is empowered to issue a certificate for that amount to the Collector, and thereupon the Collector must proceed to recover that amount in the same manner as an arrear of land revenue. Which is the State Government to which such application lies is indicated by Rule 36 of the Rules made under the Act. Rule 36 provides that an application under Section 17 of the Act shall be made to the Government of the State where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed is situated. It is the location of the Central Office or the Branch Office in which



*the newspaper employee is employed which determines which State Government it will be. **The Rule works in favour of the convenience of the newspaper employees.***

27. The purpose of Rule 36 of the Working Journalists Rules is to provide alternate fora to Workmen where they can prefer their claims. In order to decide the issue of jurisdiction, therefore, apart from Section 17 of the Working Journalists Act read with Rule 36 of the Working Journalists Rules, the tests of cause of action applicable to civil court under Section 20 of the CPC would also be relevant.

28. In ***Paritosh Kumar Pal v. State of Bihar & Ors. 1984 LAB. I.C. 1254***, the Patna High Court considered the question as to which State Government would have territorial jurisdiction to make a reference under section 10 of the Industrial Disputes Act, 1947. The Court held that since the Industrial Disputes Act, 1947 is silent on this question, the test of jurisdiction applicable to Civil Courts would have applicability. The observations of the Court are as under:

“13. Now an inclusive analysis of the aforesaid authoritative enunciation of law would indicate that three clear cut principles for determining jurisdiction emerge therefrom. For clarity these may be first separately enumerated as under:

(i) Where does the order of the termination of services operate?

(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?

(iii) That the well-known test of jurisdiction of a civil court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable.



14. Applying the above, one of the primary tests is as to where the impugned order of the termination of service of a workman in effect operates.

Xxx

Xxx

Xxx

16. Coming now to the third principle, it appears to me that by binding precedent it is now well-established that the well-known test of jurisdiction of the Civil Courts would be equally attracted to the situation in the absence of any provision in the Act on the point. Apart from the repeated affirmance of Lalbhai Tricumlal Mills' case (supra)(which specifically held that the well-known test of jurisdiction would be alphabet) by the final Court in Indian Cable Co's case (supra), it was expressly observed therein as follows:

...The Act contains no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings.

And again:

In our opinion, these principles are applicable for deciding which of the State has jurisdiction to make a reference under Section 10 of the Act."

29. The above decision of the Patna High Court in **Paritosh Kumar Pal (supra)** was affirmed by the Supreme Court in **Bikash Bhushan Ghosh and Ors. v. Novartis India Limited and Ors. 2007 (5) SCC 591**. In the said decision, the Supreme Court unequivocally held that two State Governments can have concurrent jurisdiction to make reference if the cause of action test is satisfied. The observations of the Court are as under:

"10. We may notice that in Paritosh Kumar Pal v. State of Bihar and Ors. 1984 LAB. I.C. 1254, a full Bench of the Patna High Court held;

13. Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clearcut principles or tests



for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under:

(i) Where does the order of the termination of services operate?

(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?

(iii) That the well-known test of jurisdiction of a civil Court including the residence of the parties and the subject matter of the dispute substantially arising therein would be applicable.

Referring to the provisions of the Code of Civil Procedure, it was held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the court concerned.”

Xxx

Xxx

Xxx

“12... What would constitute cause of action, has recently been considered by this Court in *Om Prakash Srivastava v. Union of India* and *Anr.* (2006)6SCC207 wherein it was held;...

Xxx

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to



obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra: AIR 2000 SC 2966.

Judged in that context also, a part of cause of action arose in Calcutta in respect whereof, the State of West Bengal was the appropriate government. It may be that in a given case, two States may have the requisite jurisdiction in terms of Clause (c) of Subsection (1) of Section 10 of the Industrial Disputes Act. Assuming that other State Governments had also jurisdiction, it would not mean that although a part of cause of action arose within the territory of the State of West Bengal, it would have no jurisdiction to make the reference.

30. On a perusal of the above two judgments, it is clear that if a part of the cause of action arises within the territory of the State, the said State Government would be empowered to refer the dispute to the Labour Court. The logical conclusion of this would be that if a part of cause of action arises in more than one State, either of the Governments of the concerned State would be empowered to refer the dispute to the Labour Court so long as there is a direct nexus between the dispute raised and the territory of the said State.

31. Ld. Counsel Rahul Malhotra attempted to distinguish **Bikash Bhushan Ghosh** (*supra*) on the ground that in the said case, the termination was actually a consequence of non-obeying of the order of transfer, thus it was in that narrow context it was held by the Supreme Court that cause of action test would apply. However, the said argument is without merit. The



test laid down in *Paritosh Kumar Pal v. State of Bihar & Ors.*, upheld in *Bikash Bhushan Ghosh and Ors. v. Novartis India Limited and Ors.* has also been affirmed by the Ld. Division Bench of this Court in *LPA 590/2009* titled *Dharambir Singh v. Hindustan Unilever Ltd. and Ors.* decided on 15th September, 2015. The Ld. Division Bench upheld the three tests set out in *Paritosh Kumar Pal v. State of Bihar & Ors.*, including the nexus test and the test of jurisdiction as applicable to Civil Courts. The observations of the Ld. Division Bench are set out below:

“6. Supreme Court in Bikash Bhushan Ghosh (supra) applying the principles laid under Section 20 CPC held that the State Government of the State where part of cause of action arose would also have jurisdiction to make a reference. The Supreme Court laid down the following principles to determine the jurisdiction:--

The principles for determining jurisdiction are:

- (i) Where does the order of the termination of service operate?*
- (ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?*
- (iii) The well-known test of jurisdiction of a civil court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable.*

7. Supreme Court thus held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the Labour Court concerned. In the said case before the Supreme Court the termination orders which were served at Calcutta were not the only bone of contention but the transfer orders as well because



the termination orders were passed for not obeying the transfer orders. It was held that if the transfer orders were set aside the appellants therein would be deemed to be posted in Calcutta. There being a direct nexus with the termination of their services at Calcutta it was held that State of West Bengal was the appropriate Government.

8 . In the facts of the case, reliance of learned Counsel for Dharambir on Bikash Bhushan Ghosh (supra) is thus misconceived for the reason that in the said case after transfer, the workmen therein did not join at the transferred place and had challenged the transfer orders and the termination for non-complying with the orders of transfer. Thus, termination was a consequence of non-obeying the order of transfer.

9. In the present case the services of Dharambir were terminated much after he was transferred to Faridabad though he had challenged the transfer order and the said writ petition was pending, however the termination was not on account of nonobeying the transfer order or a consequence of transfer.

10. In 1984 Lab IC 1254 (Patna) (FB) Paritosh Kumar Pal v. State of Bihar the Full Bench of Patna High Court held-

13. Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clear-cut principles or tests for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under:

(i) Where does the order of the termination of services operate?

(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?



(iii) That the well-known test of jurisdiction of a civil Court including the residence of the parties and the subject matter of the dispute substantially arising therein would be applicable.”

32. By applying the cause of action test, in the opinion of this Court, it cannot be held that the reference by GNCTD is fallacious or the Labour Courts in Delhi do not have jurisdiction to adjudicate the dispute.

33. Moreover, the decision in ***Braham Prakash v. GNCTD 2008 (2) SLR 624*** which is sought to be relied upon by the Management would not be directly applicable in the present case as the said case relates to a case of termination. Interestingly, in ***Brahm Prakash (supra)***, both the decision of ***Bikash Bhusan Ghosh (supra)*** and ***Paritosh Kumar Pal (supra)*** are dealt with in detail. Brief facts of the case in ***Brahma Prakash*** are that the Workman was transferred by the Management to Rajasthan on 1st July, 1999. A criminal complaint was filed against the Workman for stealing iron scrap and he had to go to jail. Upon being released on bail in 2001, when he reached the said office to resume duty, the Management refused to allow him to join and terminated his services on 17th July 2001. It was in this factual background that the Court held that the situs of the employment of the Workman at the time of termination was at Rajasthan and the Courts at Delhi cannot entertain reference on the ground that the head office of the Respondent Management was in Delhi or that the PF *et cetera* was being deposited in Delhi. The Court in categorical terms held that since the cause of action which constituted an infringement of the rights of the Workman arose at Rajasthan where he was last employed. It was in these facts and circumstances, the Court held that the situs of employment was where the



Workman was last employed. In any event, the Court in the said decision also applied the cause of action test to hold that violation of the rights of the Workman took place in Rajasthan and thus came to the conclusion that the Labour Court in Rajasthan would have territorial jurisdiction to adjudicate the matter. The relevant portion of the judgment is set out below:

“14. Taking note of the facts and circumstances of the present case, undoubtedly, the situs of the employment of the petitioner workman at the time of termination of his services was at Neemrana, Rajasthan. Thus, the subject matter of the dispute substantially arose in the State of Rajasthan. Consequently, it has to be held that as the immediate occasion which resulted in the alleged infraction of the rights of the petitioner workman occurred in the State of Rajasthan, the courts in Delhi cannot be vested with territorial jurisdiction on the allegation that the head office of the respondent management is in Delhi or that the PF etc. was being deposited in Delhi or even that the Directors of the respondent management are residing in Delhi. In other words, by sifting out the extraneous factors on which the petitioner workman sought to place emphasis, there is only one conclusion that can be arrived at, which is that in the facts and circumstances of the present case, the cause of action which constituted an infringement of the rights of the petitioner workman arose at Rajasthan where he was lastly employed.”

34. The situs test sought to be relied upon by the Management actually, in the opinion of this Court, points towards Delhi as the situs of the employment of the Workmen in the present dispute because a substantial portion of the dispute relates to the service period of the Workmen in Delhi.



Thus, the reliance of Management on the dictum of *Brahma Prakash (supra)* to argue that the Government of NCT of Delhi did not have power to refer the matter for adjudication is misplaced. Considering that out of a period of 31 months for 23 months journalists concerned were posted in Delhi even by applying the situs test the Labour Courts in Delhi would have jurisdiction and the GNCTD would have power to refer the dispute for adjudication.

35. Rule 36 of the Working Journalists Rules is very clear to the effect that complaint under Section 17 of the Working Journalists Act would be liable to be filed in the Central office or the Branch office of the newspaper establishment in which the Workmen is situated. This Rule does not oust the jurisdiction of the State Government emanating from the well-established principle of labour law which determines the State Government for the purpose of making a reference. Moreover, the situs test and the test of cause of action cannot be held to be contradictory in nature. In fact, they complement each other and should be applied conjunctively. The Supreme Court while interpreting Rule 36 in *Samarjit Ghosh v. Bennett Coleman And Co. & Anr. 1987 (3) SCC 507* has observed that the said Rule 36 should be interpreted in favour of the Workmen. Rule 36 of the Working Journalists Rules would, therefore, have to be read as creating additional forum of either the Central office including the office of the Management where the Workman is employed for the relevant period *qua* which the claim is made under Section 17 of the Working Journalists Act. Such a Branch Office of the establishment cannot be excluded from the applicability of Rule 36 simply because the Workman may have been transferred to another Branch Office in another State.



36. The Newspaper/Management in the present case has offices across the country and one of their main offices is in Delhi as is evident from the affidavit filed by Mr. Sachin Gupta, the legal head of the Management who is stated to be working from the office of Management at 207, Aakashdeep Building, Barakhamba Road, New Delhi- 110001. The cause of action and the direct nexus test, under such circumstances, also apply to the present case in terms of the judgment of Supreme Court in ***Bhushan Ghosh v. Novartis India Ltd. [2007] 5 SCC 591*** wherein the Supreme Court has clearly held that the place where the part of cause of action arises would also be the State Government which would have the jurisdiction under the Industrial Disputes Act, 1947 and therefore under the Working Journalists Act.

37. As far as the Workmen/Respondent Nos. 7,8,9,11 and 13 are concerned, the plea of the Management is that the Labour Court having jurisdiction would be the Court located in the South Delhi District and not the Labour Court in the Central Delhi District. Insofar as the issue relating to the two Labour Courts within Delhi is concerned, this Court has repeatedly emphasised that the delineation between the civil Courts in various Districts within Delhi cannot be treated in a water tight manner. In ***Rakesh Sharma v. Bhuvneshwar Dayal, Tr.P.(C) 33/2020*** decided on 9th April 2021 & ***Advance Magazine Publishers Inc. v. Bombay Rayon Fashion Ltd., Tr.P.(C) 39/2020*** decided on 29th September 2020 this Court has held that the Court in a different district would not be completely denuded of jurisdiction to adjudicate matters, owing to the unique and staggered manner in which the courts in different districts were created. Furthermore, sometimes there is confusion within Delhi as to in which District Court or



the Labour Court a particular dispute would be liable to be entertained. In view of this, insofar as Workmen/Respondent Nos. 7,8,9,11 and 13 are concerned, following the orders passed in *Rakesh Sharma (supra)* & *Advance Magazine (supra)*, the plea relating to jurisdiction is rejected.

38. By applying both the situs test as also the test of cause of action, this Court further holds that the Labour Courts in Delhi would have the jurisdiction to entertain the present claims qua Respondent Nos. 4-15. Accordingly, the issue is decided in favour of the Workmen.

39. The claims at hand have been pending before the Labour Court in Delhi for several years now, i.e., since 2017. The claims which are raised by the Journalists also are those claims which have been in fact considered by the Supreme Court itself in the judgments discussed above. There is a long history to these proceedings and already considerable delay has occurred. The Supreme Court, as discussed above, has emphasized on expeditious disposal of the claims of journalists and had directed High Courts to facilitate such expeditious disposal of claims. The acceptance of the objection *qua* jurisdiction raised by the Management at this belated stage when evidence stands concluded would, thus, be completely detrimental to the interests of the Workmen and contrary to the spirit of the decisions of the Supreme Court discussed above. Evidence has already been concluded before the Labour Court in the present claims. The record also reveals that the Management, having been aware of the proceedings before the Labour Court, has repeatedly avoided appearance before the said Court leading to several adjournments. Such conduct on behalf of the Management is not appreciated by this Court.

40. The matter shall now proceed before the Labour Court for final



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adjudication. The matter is stated to be listed before the Labour Court on 26th February, 2022. Parties are directed to appear on the said date. The Labour Court shall proceed in accordance with law and dispose of the matter expeditiously within a period of four months.

41. Petition is disposed of along with all pending applications in above terms.

PRATHIBA M. SINGH
JUDGE

JANUARY 27, 2022/Aman/SK
(corrected & released on 01st February, 2022)

