IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 969 of 2024

Awaz Prakashan Private Limited, having their address at Nawadih, Near Birsa Munda Park, P.O. - B. Polytechnic, P.S. - Dhanbad, Dhanbad, Jharkhand - 828130 through its authorized representative Anil Kumar Ram, son of Gulab Chand Ram, aged about 34 years, resident of Bimal Prasad Bhawan, Saraidhela Road, Near Canara Bank, Sahu Kirana, Saraidhela, Nichitpur, Saraidhela, Dhanbad, Jharkhand - 828127.

… … Petitioner

Versus

1. Krishna Kumar Choubay, son of Late Rameshwar Choubay, aged about 61 years, resident of MADA Colony, Chiragora, P.O. & P.S. Dhanbad, Dhanbad, Jharkhand – 826001
2. Employee Provident Fund Organization, through its Commissioner, having its office at Bhagirathi Complex, Near Circuit House, Karamtoli, Dist. Ranchi **… … Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Shresth Gautam, Advocate
Mr. Gaurav Kumar, Advocate
Mr. Yogendra Yadav, Advocate

For the Respondent : Mr. Mukesh Bihari Lal, Advocate

18/9th December 2024

1. Learned counsel for the parties are present.

2. This writ petition has been filed for the following reliefs: -

> *"(1) For issuance of writ(s)/ order(s)/ direction(s) or a writ in the nature of Certiorari for quashing and setting aside the Judgment dated 15.07.2023 passed by Shri Niraj Kumar Srivastav, Ld. Presiding Officer, Labour Court, Dhanbad in I.D. Case No.)- 02/2022 [Impugned Judgment"] (ANNEXURE-8) whereby and whereunder the Ld. Labour Court, Dhanbad has allowed the application filed by the Respondent/ Workman under Section 2A of the Industrial Disputes Act, 1947 in a completely mechanical and arbitrary manner, in an ex-parte proceeding without giving due opportunity of hearing to the Petitioner herein and since the*

same has been passed in complete contravention of the facts and applicable law.

And/or

(ii) To hold and declare that the Respondent/ Workman is not entitled to receive any back wages and consequential benefits since the said Respondent has been arbitrarily and deliberately abstaining from rendering his service and as such on account of the principle of 'no work no pay' the Respondent/ Workman is not entitled to receive back wages and no liability can be fastened upon the Petitioner herein.

And/or

(iii) Pass any such other order(s) and/ or direction(s) as Your Lordships may deem fit and proper in light of the facts and circumstances of the instant case for doing conscionable justice to the Petitioner herein."

3. Learned counsel for the petitioner submits that the impugned judgment passed by the learned Presiding Officer, Labour Court, Dhanbad dated 15.07.2023 is an *ex-parte* order and the order was passed without service of notice to the petitioner. The learned counsel has further submitted that the petitioner is an establishment of newspaper and has a permanent address. The notices were issued to the petitioner as per order-sheet of the learned court but the service report was not filed by the respondent although he sought information from the concerned post office under Right to Information regarding service of notice and the learned court without recording anything with regard to service report or service of notice upon the petitioner passed an order for publication of notice through local newspaper which was published in "Dainik Jagran" on 07.11.2022 and ultimately the court proceeded ex-parte.

4. The learned counsel for the petitioner further submits that on the face of the application which was filed before the learned court by the respondent, the condition precedent for filing the case under Section 2A of the Industrial Disputes Act was not satisfied. He has referred to sub-section 2 of Section 2A of the aforesaid Act of 1947 to submit that first the matter has to be raised before the Conciliation Officer and upon expiry of the stipulated time, the cause of action to move directly before the

learned labour court could arise. He has submitted that as per the application filed by the respondent, the date of removal was after the conciliation proceeding was closed. He submits that after the date of removal there has been no conciliation and therefore the impugned judgment is wholly without jurisdiction. However, he submits that since the petitioner could not participate in the proceeding no such issue was raised and the award has been passed against the petitioner. The learned counsel has also submitted that otherwise also, the proceeding was not maintainable as the respondent was a non-working journalist and the provision of Industrial disputes Act read with the provision of Working Journalist and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 which reveals that the proceeding under the Industrial Disputes Act is not available for non-working journalist. He submits that if the matter is remanded and an opportunity is granted to the petitioner, these issues can be adjudicated by the learned court.

5. Learned counsel appearing on behalf of the respondent has opposed the prayer and has submitted that the notice was issued and when nobody appeared there was a direction for paper publication and consequently there was substituted service of notice. He submits that the petitioner having not participated in the proceedings cannot questioned the service of notice and also *ex-parte* judgment passed by the learned labour court. However, he has submitted that if this Court is inclined to remand the matter before the learned court for consideration, then sometime frame may be granted, so that the matter is taken to a logical end.

6. The learned counsel for the respondent- Employees' State Insurance Corporation has submitted that though they were made party in the present proceedings, but have no role to play in the matter.

7. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, this Court finds that on 26.07.2022, the case was filed before the concerned court and it was admitted on

30.07.2022 and the notice was issued and the matter was adjourned awaiting service report. On 01.09.2022, the counsel for the applicant filed postal receipt showing track report which did not show delivery of notice. In such circumstances, the applicant had mentioned before the court that he had filed an application under Right to Information with regard to service of notice. This happened on 29.09.2022 and the matter was adjourned for service of notice and was directed to be posted on 20.10.2022. On 20.10.2022, the applicant was present before the court and the court recorded that it appeared that there was no progress in process issued to the opposite party (petitioner herein), hence the applicant was directed to take steps for paper publication and thereafter paper publication was made in newspaper and after publication, the matter was closed and ex-parte order was passed against the petitioner.

8. This Court finds that on the face of the proceedings, the notice was issued to the petitioner but there was no service report and the court directed for paper publication. It was not a case where the petitioner was avoiding service of notice nor it was the case that the petitioner had shifted the office to another unknown place. It further appears that no petition was filed from the side of the applicant for substituted service of notice.

9. Accordingly, this Court is of the view that the manner in which the court proceeded which led to passing of *ex-parte* impugned judgment cannot be sustained in the eyes of law. This is coupled with the fact that several issues have been argued by the petitioner by referring to the petition filed by the respondent and the petitioner has been prejudiced, inasmuch as, no opportunity was granted to the petitioner to raise the points regarding the very jurisdiction of the learned court. Since the concerned court had no occasion to decide the point of jurisdiction, this Court would not like to decide the point of jurisdiction for the first time in writ jurisdiction. At the first instance, those issues are required to be decided by the learned court.

10. Accordingly, the impugned judgment dated 15.07.2023 passed in I.D. Case No. 02 of 2022 is hereby set-aside and the matter is remitted back for fresh consideration before the learned court.

11. The petitioner to file written statement before the learned court within a period of one month from today.

12. The parties to appear before the learned court on 03.01.2025 and the final judgment be passed after following the procedure of law as expeditiously as possible preferably within a period of three months from 03.01.2025.

13. The parties to cooperate with the proceedings.

14. This writ petition is accordingly disposed of with the aforesaid observations and directions.

15. Pending I.A., if any, is closed.

(Anubha Rawat Choudhary, J.)

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