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

Date of Decision:- 28.02.2024

\+ LPA 835/2023 & CM APPL. 66246/2023 -Stay.
THE HINDUSTAN TIMES LTD ..... Appellant
Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Rajat Arora, Mr. Niraj Kumar, Mr. Ravi Ranjan Mishra, Mr. Sourabh Mahla, Mr. Sneh Vardhan, Advs.

versus

DY. LABOUR COMMISSIONER, GOVT OF NCT DELHI AND OTHERS ..... Respondent
Through: Mr. Ripin Sood, Gaurav Dhingra, Advs. for R-1 & 2.
Dr. Amita Saxena, R-3 in person and also for R-4 & 5.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J(ORAL)

1. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 07.11.2023 passed by the learned Single Judge in W.P. (C) 13814/2019. Vide the impugned order, the learned Single Judge has rejected the appellant's challenge to the Recovery Certificate dated 06.12.2019 issued by the learned Deputy Labour Commissioner, whereby the appellant was directed to pay a sum of Rs. 27,39,290/- to the Legal Representatives of Late Shri Arun Kumar alongwith interest @9% p.a. with effect from 27.04.2016 till the date of realization, besides costs of

Rs.25,000/-.

2. At the outset, we may first note the brief factual matrix as emerging from the record.

3. Late Mr. Arun Kumar Saxena, the husband of respondent no.3, was employed with the appellant as a Special Correspondent since 30.11.1973. Based on a domestic inquiry his services were terminated on 23.03.1991. Assailing this termination, he raised an Industrial Dispute before the learned Labour Court, which culminated in passing of the award dated 04.01.2002 in his favour directing the appellant to reinstate him with all consequential benefits. Since the appellant was neither reinstated nor paid any backwages, Late Mr. Saxena in February, 2003 approached the Deputy Labour Commissioner for execution thereof. Along with his application before the Deputy Labour Commissioner, Mr. Saxena filed a detailed chart setting out the amount payable to him till February, 2003. It appears that despite opportunity, the appellant neither controverted the calculations submitted by late Mr.Saxena nor file its own calculations. Consequently, the Deputy Labour Commissioner accepted the calculations submitted by late Mr.Saxena and issued a Recovery Certificate dated 07.04.2003 directing the appellant to pay to pay a sum of Rs. 33,63,591/- to him.

4. Being aggrieved, the appellant assailed the Recovery Certificate dated 07.04.2003 as also the award dated 04.01.2002 by way of Writ Petition being WP(C) No. 3482/2003, which came to be dismissed on 03.06.2010, with costs of Rs. 25,000/-, by which date Mr.Saxena had reached the age of superannuation on 19.12.2009. The appellant then preferred LPA No.509/2010, which came to be dismissed on 27.04.2016 with a direction to the appellant to pay the backwages with interest @6%p.a from the date of

the termination i.e. 23.03.1991 till the date of his superannuation, with a further direction that for the period from the date of his superannuation till the writ petition remained pending, he would be paid a sum of Rs. 5,00,000/- or 50% of the backwages, whichever was less.

5. It may be noted that while this LPA was pending, Shri Arun Kumar Saxena expired on 01.11.2011 and subsequently his legal heirs were brought on record. Even though the appellant's challenge to the order of the learned Single Judge as also the LPA came to be rejected, the appellants instead of releasing the due amount in favour of the legal heirs of late Mr.Saxena i.e. respondent nos.3 to 5, preferred a review petition which was also dismissed on 04.11.2016. However, since the due amount was still not paid by the appellant, the respondent no.3 was compelled to move an application before learned Assistant Labour Commissioner under Section 33C(1) of the Industrial Disputes Act. On 06.12.2019, the learned Assistant Labour Commissioner issued a fresh Recovery Certificate this time for a sum of Rs. 27,39,290/- in favour of the legal heir of Late Mr. Saxena, directing that the said amount be paid with interest @9% p.a. with effect from 27.04.2016 till the date of realization. This Recovery Certificate dated 06.12.2016 was then assailed by the appellant by way of WP(C) 13814/2019, which petition has been dismissed vide the impugned order. Being aggrieved, the present appeal has been filed.

6. In support of the appeal, learned senior counsel for the appellant submits that the impugned order is wholly perverse as the learned Single Judge has failed to appreciate that the amount claimed by the respondent, based on which the Recovery Certificate was issued, was highly inflated and was not based on the recommendation made by the Bachawat Wage Board.

Further, by drawing our attention to the review order passed by this Court in LPA 509/2010 on 04.11.2016, he submits that this Court had clearly intended to crystallise the amount payable to the respondent from the date of the award till the date of his superannuation to a sum of Rs.5,00,000/- and, therefore, the learned Deputy Labour Commissioner has erred in directing that full backwages be also paid for the period between the date of the award and the date of superannuation. He, therefore, prays that the impugned order as also the Recovery Certificate be set aside.

7. On the other hand, Dr. Amita Saxena, the legal heir of Late Shri Arun Kumar impleaded as respondent no.3, who appears in person, supports the impugned order and submits that her husband had been harassed by the appellant who because of being a well-known newspaper has been dragging them repeatedly to Court. The appellant, she submits, is not only trying to misread the orders passed in LPA 509/2010, but has also tried to repeatedly raise baseless pleas that the respondent had claimed higher wages than what was payable. She, therefore, prays that the appeal be dismissed with exemplary costs.

8. Having considered the submissions of the parties and perused the record, we find absolutely no merit in the appeal. As noted hereinabove, we find that once the award had been passed on 04.01.2002, the respondent had, in February 2003, approached the Deputy Labour Commissioner for issuance of her Recovery Certificate which came to be issued on 07.04.2003, wherein wages payable to the respondent till the month of February 2003 were taken into account. This certificate was based on the calculations furnished by Late Mr.Saxena, which calculations it is an admitted position were never challenged by the appellant before the Deputy

Labour Commissioner. Though learned senior counsel for the appellant has vehemently sought to urge that these calculations were inflated and were not based on the recommendations of the Bachawat Wage Board, we are of the considered view that it is too late in the date to now permit the appellant to urge that the calculations given by late Mr.Saxena were incorrect. We, therefore, find no reason to accept the appellant's plea that the Recovery Certificate dated 07.04.2003 was in any manner incorrect or liable to be interfered with.

9. We have also considered the submission of learned senior counsel for the appellant that vide the order passed in LPA No.509/2010 dated 27.04.2016 as also the review order dated 04.11.2016, this Court had crystallised the amount payable to the respondent no.3 towards the wages from the date of the award to the date of superannuation to Rs.5 lakhs but find absolutely no merit in the same. For the sake of convenience, we may note hereinbelow the relevant extracts of orders dated 27.04.2016 passed by this Court in LPA 509/2010:-

> *"25. The remaining part of the award would be (1) balance backwages till date of award; (2) backwages during pendency of the writ petition till 19-12-2009. It is a matter of record that arrears of last wage drawn to the extent of Rs. 3,00,000/-was paid for the period up to September 2004 (from the date of the award) and the workman had been permitted to withdraw the sum of Rs. 5,00,000/- with accrued interest. Taking the totality of circumstances, including the fact that the workman did not make an attempt to secure employment, and that during the pendency of the reference, Rs. 2000/- was directed to be paid from 05-03-1993 (which was upheld by this court), and that w.e.f. 01-09-2004, payments due under Section 17-B, ends of justice would be subserved by the following directions:*

> *(1) The appellant shall pay the balance amount of backwages accruing and payable to the workman as on the date of the award, with interest at 6% per annum from the date of award till date of order in W.P.(C) 3482/2003, i.e.,03.06.2010;*
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> *(2) As far as the future wages for the period from the date of the workman's superannuation, to the date of the order in W.P.(C) 3482/2003, i.e., 03.06.2010 is concerned, it is noticed that a sum of Rs. 9157.96 was directed to be paid each month. This order bound the parties for about 8 years, till the writ petition was decided. In the circumstances of the case, it would meet the ends of justice if the workman's legal heirs are paid a sum of Rs. 5,00,0000/- or 50% of backwages (whichever is less) for this period.*
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> *(3) The management shall discharge the above liabilities (which are over and above the amounts received under orders of court) within eight weeks from today failing which the amount owed to the legal heirs of the workman shall incur interest at the rate of 9% per annum, (amounts already paid are permitted to be adjusted)."*

10. From the aforesaid, it is evident that the appellant's plea that the amount payable towards backwages between the date of the award to the date of superannuation was crystallised at Rs.5 lakhs is wholly misconceived. On the other hand, we find that it is only the amount payable to the respondent no.3 from the date of superannuation of Late Mr.Saxena i.e. 19.12.2009 till the date of his dismissal of the writ i.e. 03.06.2010, which was crystallised at Rs.5 lakhs or 50% of backwages, whichever was less. This order cannot be read to imply that the Court had in any manner curtailed the amount towards backwages till the date of superannuation. We

also, therefore, do not find any reason to interfere with the Recovery Certificate dated 06.12.2019, which it is the common case of the parties was based on the calculations relied upon in the initial Recovery Certificate dated 07.04.2003.

11. In the light of the aforesaid, we find absolutely no reason to interfere with the impugned order at this stage. The appeal is, accordingly, dismissed with a cost of Rs.50,000/-. Costs in terms of this order be paid within four weeks. Further, since the appellant has already deposited the amount under the Recovery Certificate with the Registrar General of this Court, the Registry is directed to release the amount deposited by the appellant alongwith accrued interest thereon in favour of the respondent no.3 by remitting the same to her bank account detailed herein below:-

BANK: STATE BANK OF INDIA
BRANCH: (07407) - ASIAN GAMES VILLAGE COMPLEX, NCUI 3 SIRI INSTITUTIONAL AREA AUGUST KRANTI MARG NEW DELHI 110016
ACCOUNT HOLDER NAME: AMITA SAXENA
ACCOUNT No: 65270945892
IFSC Code: SBIN0007407

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 28, 2024
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