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Court : Punjab and Haryana

Decided On : Sep-26-2001

Reported in : [2003(96)FLR202]; (2002)IIILLJ649P& H

Judge : G.S. Singhvi and; M.M. Kumar, JJ.

Acts : Working Journalists and Others Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 - Sections 2, 3, 3(1), 8, 13, 14, 15, 16, 16(1), 17, 17(1), 17(2) and 17(3); Industrial Disputes Act, 1947 - Sections 3(2), 10(1), 25F, 33C and 33C(2); Constitution of India - Aritcles 136 and 226; Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Rules, 1957 - Rule 36; Payment of Wages Act, 1936 - Sections 10; The Workmen's Compensation Act, 1948

Appeal No. : Letter Patent Appeal No. 750 of 1993

Appellant : The Tribune Trust

Respondent : The Presiding Officer, Labour Court, Bhatinda and anr.

Advocate for Def. : None

Advocate for Pet/Ap. : R.S. Mittal and; Uashwinder Paul Singh, Advs.

Disposition : Appeal dismissed

Judgement :

G.S. Singhvi, J.

1. This is an appeal against order dated 27.7.1993 vide which the learned Single Judge dismissed C.W.P. No. 82 of 1992 filed by the appellant for quashing the applications filed by respondent No. 2 under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, the 1947 Act) and notices dated 14.11.1991 and 26.11.1991 issued by the Presiding Officer, Labour Court, Bhatinda (respondent No. 1).

2. Respondent No. 2- Babu Ram Bansal submitted two applications under Section 17(1) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, the 1955 Act) to the Secretary to the Government of Punjab, Labour and Employment Department, Chandigarh for recovery of Rs. 66766.30 and Rs. 64359.60 from The Dainik Tribune, Chandigarh and The Punjabi Tribune, Chandigarh respectively claiming that the said amount was due to him on account of mandatory monthly retainer allowance as per Palekar Wage Board Award. In its reply the appellant raised several objections including the one relating to the jurisdiction of the Government of Punjab to entertain the applications and after considering the same, the Labour Commissioner, Punjab informed respondent No. 2 that as per Rule 36 of the Working Jorunalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Rules, 1957 (for short, the 1957 Rules), his case fell within the jurisdiction of Union Territory administration, Chandigarh. Thereafter, respondent No.2 filed two application under Section 33-C(2) of the 1947 Act in the Labour Courts at Chandigarh and Bhatinda for payment of the amounts specified therein. After registration of the appelication filed before him, respondent No. 1 issued notices dated 14.11.1991 and 26.11.1991 to the appellant for its appearance on 9.1.1992 and 22.1.1992. However, instead of putting appearance, the appellant filed a petition under Article 226 of the Constitution of India for quashing the applications and the two notices by asserting that respondent No. 2 was not its employee and, therefore, he did not have the locus standi to claim benefits under the 1955 Act and in any case, respondent No.1 did not have the territorial jurisdiction to entertain the application filed by him under Section 33-C of the 1947 Act.

3. Respondent No. 2 controverted the appellant's plea that respondent No. 1 does not have the jurisdiction to entertain the application filed by him under Section 33-C(2) of the 1947 Act.

The learned Single Judge dismissed the writ petition with the following observations:-

'After hearing learned counsel for the parties and going through the records of the case, I am, however, of the opinion that the points raised by Mr. Mittal have no merit. Even a bare perusal of Section 17 of the Act of 1955 would reveal that where any amount is due under the Act to a newspaper employee from an employer, and the said amount is an admitted amount, the remedy, of course, is to make an application to the State Government for recovery of the said amount but that is without prejudice to any other mode of recovery. The words 'without prejudice to any other mode of recovery' undoubtedly convey the meaning that the other modes of recovery, like civil suit, or resort to the provisions of Industrial Disputes Act or any other remedy that may be available, are not barred. In fact, it appears that Section 17 was framed with a view to provide a speedy remedy and it is for the that reason that on its satisfaction that any amount is due, the State Government can issue a certificate for that amount to the Collector, who shall proceed to recover that amount in the same manner as an arrear of land revenue. That being the position, respondent No. 2 was well within his rights to approach the Labour Court. In so far as the question of seeking a reference from the Government is concerned, suffice it to say that even though the title of application mentions Section 33-C(2) of the Industrial Disputes Act, the prayer is in terms of Section 13 of the Act of 1955. A working journalist is entitled to the wages at rates not less than specified in the order on coming into operation of the order of the Central Government as is clearly made out from the provision of Section 13 of the Act aforesaid. The application is based upon the wages that a working journalist is entitled to under Palakar Wage Board Award and Bachawat Wage Board Award The reading of the application as such does not show that respondent No. 2 is asking for settlement or determination of his rights. May be permissible for the petitioner to show to the contrary but the jurisdiction of theLabour Court to issue summons at least is not based upon the defence that might be projected On the

other hand, any Court dealing with the matter of any kind, would have jurisdiction if on the pleadings made out in the petition, it is competent to grant the relief. It shall, thus, be open to petitioner to contest the matter before the Labour Court and obviously, if the very right of respondent No. 2 to claim the wages is disputed, the Labour Court will go into the matter but at this stage it cannot be said that the claim of respondent No. 2 was such which could not be gone into by the Labour Court without seeking a reference.

The last contention of Mr. Mittal was that the only respondent which was necessary or proper party and thus to be arrayed in application under Section 33-C(2) was the Trust and not the Tribune Trust is again such a question which cannot and should not be decided in proceedings as determination of question aforesaid also depends upon the various facts. This question again is in the domain of Labour Court. Be that as it may, the aforesaid questions would be decided by the Labour Court but that would be only, if the defence is put in by the petitioner, before the Labour Court and all the points referred to above are pressed into service. It is, however, made clear that in case objections to the effect aforesaid are raised before the Labour Court the same would be decided by it."

(Underlining is ours)

5. Shri R.S. Mittal argued that the learned Single Judge has erred in rejecting the appellant's plea against the maintainability of the applications filed by respondent No. 2 under Section 33-C(2) of the 1947 Act. He submitted that the provisions of the 1955 Act constitute a complete Code and a newspaper employee can file an application for recovery of the amount due to him from his employer only under Section 17(1) of the said Act and if the State Government so desires, it can make a reference to the Labour Court under Section 17(2). He further argued that Section 16 read with Section 17 of the 1955 Act operates as a complete bar to the maintainability of the application under Section 33-C(2) of the 1947 Act and the learned Single Judge has committed a serious error by rejecting this plea of the appellant. He then argued that respondent No. 1 does not have territorial jurisdiction to entertain the applications filed by respondent No. 2 under Section 33-C(2) of the 1947 Act because the appropriate government in the case of the

appellant is the Central Government - Chandigarh Administration and not the Government of Punjab.

6. We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to agree with him that the applications filed by respondent No.2 under Section 33-C(2) of the 1947 Act and notices issued by respondent No.1 should be quashed.

7. For the purpose of appreciating the arguments of the learned counsel in a correct perspective, it will be useful to notice the scheme of the 1955 Act. Section 3(1) of the 1955 declares that 'provisions of the Industrial Disputes Act, 1947 as in force for the time being, shall subject to the modification specified in Sub-section(2), apply to, or in relation to, working journalists as they apply to, or in relation to, workman within the meaning of that Act. 'Section 3(2) modifies Section 25-F(a) of the 1947 act in its applicability to the Editors and working Journalists by providing longer period of notice for retrenchment. Section 16(1) of the 1955 Act declares that the provisions of the said Act shall have effect, notwithstanding anything inconsistent therein contained in any other land or in terms of any award of agreement or contract of service, whether made before or after the commencement of the 1955 Act. Proviso to Section 16(1) lays down that where under any award, agreement, contract of service or otherwise, a newspaper employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under the said Act, he shall continue to be entitled to the more favourable benefits in respect of that matter notwithstanding that he receives benefits in respect of other matters under the 1955 Act. Section 17(1), which provides for recovery of money due from an employer, lays down that where anyamount is due under the 1955 Act to a newspapers employee from an employer, the employee himself, or any person authorised by him, or in the case of the death of the employee, any member of his family, may, without prejudice to any other mode of the recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government is satisfied that any amount is so due, then it shall issue a certificate for that amount to the Collector, who shall proceed to recover that amount as an arrears of land revenue. Section 17(2) lays that if any question

arises as to the amount due under the 1955 Act to a newspaper employee from his employer, the State Government may, on its own motion or upon an application made to it, refer the question to any Labour Court constituted under the 1947 Act or under any corresponding law relating to investigation and settlement of industrial disputes. Section 17(3) lays down that the decision of the Labour Court shall be forwarded to the State Government and any amount found due may be recovered in the manner provided in Sub-section (1).

8. In our opinion, the objection raised by the appellant to the applicability of the provisions of the 1947 Act to a newspaper employee defined in Section 2(e) and the newspaper establishment defined in Section 2(d) of the 1955 Act deserves to be rejected in view of the plain language of Section 3(1) vide which the 1947 Act has been expressly made applicable to the Working Journalists subject to the modifications specified in subsection (2) thereof, The use of expression 'without prejudice to any other mode of recovery' in Section 17(1) also makes it clear that the remedy available under Section 17(1) read with Sections 17(2) and 17(3) of the 1955 Act is not exclusive but is an alternative remedy available to the newspaper employees for recovery of amount due. The reason for use of the said expression in Section 17(1) is not far to seek. Before the enforcement of the Constitution and enactment of the 1955 Act, the competent Legislature had enacted the Payment of Wages Act, 1936, the 1947 Act and The Workmen's Compensation Act, 1948 and other similar welfare legislations for protecting the rights and interest of the workers and also for creating different adjudicatory forums for redressal of their grievances in relation to the conditions of service. The newspaper employees, who fell within the definition of the workman/worker under the 1955 Act could also seek protection of their rights/interest by availing remedies provided under such statutes. Therefore, while enacting the 1955 Act, the Parliament had taken care not to deprive the employees of the remedies already available to them including the one under Section 33-C(2) of the 1947 Act for recovery of the amount due from the employer.

9. In view of the above discussion, we hold that the remedy available to the newspaper employees under Section 17(1) read with Section 17(2) and 17(3) of the 1955 Act does not operate as a bar to the invoking of other remedies including

the one under Section 33-C(2) of the 1947 Act by the newspaper employees.

10. The question as to whether Section 17 of the 1955 Act bars the remedies available to the newspaper employees under other statutes has been considered by different High Courts. In Jay Gujarat Prakashan Ltd. v. Hariprasad Hargovindas Pandva and Anr., AIR 1960 Gujarat 10, a Division Bench of Gujarat High Court was called upon to consider whether an application filed by a newspaper employee under Section 10 of the Payment of Wages Act, 1936 was barred by Section 17 of the 1955 Act. While rejecting the plea of the employer that the application was not maintainable, the Court held as under:-

'We are unable to read anything in this section which can even remotely suggest that the jurisdiction of the Authority under the Payment of Wages Act has, in any manner, been affected by it. Moreover, the argument ignores the words 'without prejudice to any other mode of recovery' in the section. There is no substance in this contention and it must be negatived.'

11. In Management of Statesman Ltd., New Delhi v. Governor, Delhi, 1975 Lab. I.C. 543, a learned Single Judge of the Delhi High Court considered the applicability of the provisions of the 1955 Act vis-a-vis the 1947 Act in the context of anaward made by the Industrial Tribunal vide which the preliminary objection raised on behalf of the petitioner to the maintainability of reference was overruled. While rejecting the challenge, the learned Single Judge observed as under;-

'Section 3 of this Act has maintained the provisions of Section 3 of Act 1 of 1955. The result is that by a fiction of law, the provisions of Industrial Disputes Act have been extended to and applied to, or in relation to the working journalists, in the same manner and to the same extent as they apply to, or in relation to, workman defined in Industrial Dissipates Act. Consequent the working journalists are fully entitled to take advantage of the provisions of the Industrial Disputes Act like any other workman without their being lebelled workman as such. The modification of the Industrial Disputes Act in its application to working journalists is indicated by Sub-section (2) of Section 3 and other provisions of the Act but subject to them the Industrial Disputes Act mutates mutandis applies to the working journalists. It is, therefore, not necessary to decide whether they are really workmen as such but

they do rank with them for the benefits of the Act. The preliminarily issue No. 1 decided by the Tribunal is, therefore, not open to challenge.

XX XX XX XX

Section 17 deals with the recovery of the amount due by coercive measures as well as the decision of some questions in dispute by Labour Court under the Industrial Disputes Act. This dispute between the parties is to be determined under the provisions of the Industrial Disputes Act and there is no provisions of the Act to debar the reference of the dispute between the parties for adjudication by an Industrial Tribunal or Labour Curt as the case may be. Again if the contentions of Mr. Pai were accepted, the provisions of Section 3 of the Act applying the provisions of the Industrial Disputes Act to the Working Journalists as it applies to the workman would become redundant. Both the provisions must harmoniously be construed. So construed, they do not leave any room for doubt that the provisions of Industrial Disputes Act are certainly ancillary and are to be used in aid of rights and disputes of the Working Journalists governed by the Working Journalists Act.

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In the present statute under consideration, Section 8 of the Act expressly applies the provisions of the Industrial Disputes Act to the Working Journalists. The Journalists Act even taken as a complete code for the sake of argument, would include within its ambit Section 3 and the provisions of the Industrial Disputes Act extended to it by a fiction created by provisions of law. There is nothing in the Journalists Act which expressly or by necessary intendment excluded the application of the Industrial Disputes Act. to matters which lists Act.

12. In Partap Chandra Mohanty v. General Manager, United News of India and Anr., 1993 Lab. I.C. 919, a Division Bench of Orissa High Court considered the issue of the applicability of the provisions of the 1947 Act to the Working Journalists and held as under:-

'As to Section3(I) of the Working Journalists Act, we would say that provisions in that section making the Industrial Disputes Act applicable to working journalists

cannot be taken to be that the said Act would not apply to other newspaper employees. Section 3(1) might have been enacted to make it abundantly clear that the Industrial Disputes Act would apply to working journalists even if they may not satisfy the definition of 'workman' as given in the Industrial Disputes Act. It is worth pointing out in this connection that a working journalists Act may not be a 'workman' if the definition of that expression as given in the Industrial Disputes Act were to apply to him. The legislature, however, wanted the benefits of the Industrial Disputes Act to be made available to working journalists and it is perhaps because of this that Section 3(1) was inserted in the Act. This apart, reference to Section 3(1) shows that certain modifications were made in the provisions of the Industrial Dispute Act in their application toworking journalists. We do not think if we would be justified in denying the benefits of a statute important as the Industrial Disputes Act to the categories of newspaper employees, if otherwise they be workmen within the meaning of that Act, because of what has been provided in Section 3(1) of the Working Journalists Act.

As to the application of the two specific Acts to newspaper employees because of what has been provided in Sections 14 and 15 of the Working Journalist Act, we would say that these two sections were enacted to make the two Acts in question applicable to newspaper establishments because dehors these provisions, those Acts might not have applied to such establishments. The legislature, however, wanted to give the benefit of those Acts to all newspaper employees. It may be pointed out that Section 14 and 15 have referred to the application of the two Acts in question to 'every newspaper establishment' and not to 'newspaper employees.' Of course, by making these two Acts applicable to all newspaper establishments, the benefits of the same were conferred on all newspaper employees. This does not mean that the legislature wanted to rob the newspaper employees of the benefits of other Acts. According to us, no such conclusion can be drawn on the basis of what has been provided in Ss. 14 and 15 of the Working Journalists Act.'

13. In Babu Ram Bonsai v. Presiding Officer, Labour Court, Jalandhar, (1997-1) 115 P.L.R. 103, a learned Single Judge of this Court examined the issue relating to the maintainability of the application filed by a Working Journalist under Section 33-C(2) of the 1947 Act for recovery of the amount due from the employer and

held that the petitioner can either file an application under Section 17(1) of the 1955 Act or file an application Section 33-C(2) of the 1947 Act and dismissal of the application filed under Section 33-C(2) on technical grounds do not operate as a bar to the filing of application under Section 17(1).

14. As regards, Section 16(1), it is sufficient to observe that the main purpose of enacting this provision is to protect the rights available to the workmen under the 1955 Act notwithstanding anything inconsistent contained in any other law or award, agreement or contract of service. This cannot be interpreted as excluding the applicability of the provisions of the 1947 Act under which larger benefits may be available to the newspaper employees falling within the definition of 'workman' under Section 2(s) of that Act. This is the precise reason why larger benefits available under such award, agreement or contract of service or otherwise have been saved by proviso to Section 16(1).

15. The argument of the learned counsel that Labour Court, Bhatinda does not have territorial jurisdiction to entertain the applications filed by respondent No. 2 merits rejection because neither this plea was raised in the writ petition nor any argument was advanced before the learned Single Jude on this point, In fact, during the course of hearing before us, Shri Mittal candidly conceded that this point has not been raised before the learned Single Judge. Therefore, we do not find any valid ground to entertain the new plea sought to be raised for the first time.

16. We are further of the view that the writ petition filed by the appellant was wholly misconceived and ought to have been dismissed at the threshold because it had invoked jurisdiction of the Court without even putting appearance before the Labour Court to raise an objection to the maintainability of the applications filed by respondent No. 2 and jurisdiction of respondent No. 1 to entertain the same. It may have been possible for the Court to examine the jurisdictional issue if the appellant had raised the same before respondent No. 1 and the latter had decided against it. However, instead of doing that, the appellant adopted the unusual course of filing a writ petition for quashing the applications filed by respondent No. 2 and notices issued by Labour Court, Bhatinda without making an attempt to seek

adjudication of the preliminary issue relating to territorial jurisdiction. In D.P. Maheshwari v. Delhi Administration, AIR 1984 S.C. 153 their Lordships of the Supreme Court observed that the Tribunal constituted underthe 1947 Act should not decide the dispute in piece-meal and the High Court should not stop the proceedings pending before the Labour Court by entertaining writ petitions. Some of the observations made in that decision are extracted below:-

'Tribunals entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in disputes at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution, stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them Article 226 and article 136 are not meant to be used to break the resistance of workman in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences.'

17. There are some other decisions in which the Courts have expressed the view that the finding recorded by Labour Court/Industrial Tribunal on the point of jurisdiction can be challenged even before the final adjudication of the dispute, but we need not deal with those cases because on a consideration of the facts of this case, we are convinced that the learned Single Judge did not commit any error by declining to quash the notices issued by respondent No. 1 or entertain the appellant's prayer for quashing of the applications filed by respondent No. 2 under Section 33-C(2) of the 1947 Act because it had rushed to this Court without raising these objections before respondent No. 1.

18. We are further of the view that all questions incidental to the adjudication of the applications filed by respondent No. 2 including the objection of the appellant to the maintainability of the same could have been decided by the Labour Court and there is no justification whatsoever for the High Court to entertain this objection at this stage, In The Management of Samyuktha Karnataka v. M.L. Satyanarayananna Rao and Anr., 1986 Lab. I.C. 626, a learned Single Judge of Karnataka High Court held that while deciding a reference made to it under Section 17(2) of the 1955 Act, the Labour Court has the jurisdiction to decide the status of the employee. Some of the observations made in that decision are worth-quoting. The same read as under: -

'I am not impressed by the submission. Sub-section (2) of Section17 confers power on the State Government to refer a dispute raised by a person on the basis that he was a working journalist regarding salary due to him from his employer and if the State Government is prima facie satisfied that the matter merits reference under the said provision it has the power to make a reference. Therefore, it should be held that the Labour Court which is vested with the power to decide such dispute has also the power to decide all incidental questions necessary for the exercise of the power. Acceptance of the plea of the petitioner would render Section17(2) purposeless for, in every case, if the Management concerned were to raise an objection that the claimant concerned was not a working journalist, the Labour Court would have no jurisdiction to decide the issue. Therefore. I hold that in a reference made under Section 17(2) of the Act read with Section 10(1) of the I.D. Act, the Labour Court has the jurisdiction to decide the question as to whether the claimant was a working journalist if such a question is raised on behalf of the Management. '

19. In Daily Thanthi and Ors. v. State of Tamil Nadu and Ors., 1997 Lab. I.e. 2025, a learned Single Judge of Madras High Court also expressed the same view by making the following observations:-

'In the words, the State Government before whom the application for recovery ismade in the State Government which will refer the question as to the amount due to aLabour Court, and the Labour Court upon reaching its decision will forward the

decision to the State Government, which will then direct recovery of the amount. As already stated, in reference made under Section 17(2) of the Act read with Section 10(1) of the Industrial Disputes Act, the Labour Court has the jurisdiction to decide the question as to whether the claimant was a working journalist if such a question is raised on behalf of the management. In view of the scheme of the Act if the State Government is 'prima facie satisfied' that the matter before it merits reference under the said provision, it has power to make the reference, consequently the Labour Court has power to consider the dispute referred to it and also the power to decide all incidental questions necessary for the exercise of the power. If the employer raises an objection that the claimant is not a working journalist, the Labour Court will have to record a finding that the concerned workman was a working journalist as defined in Section 2(f) of the Act. '

(Underlining is ours).

20. For the reasons mentioned above, we hold that the appeal is meritless and is liable to be dismissed. Ordered accordingly. The appellant shall pay costs of Rs. 5000/- torespondent No. 2 because the adjudication of the applications filed by him has been delayed by almost 10 years at its instance.

Sd/- M.M. Kumar, J.

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