The Hindu and anr. Vs. their Workers (Madras Union of Journalists)

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Court : Chennai

Decided On : May-07-1957

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Judge : Rajagopala Ayyangar, J.

Appellant : The Hindu and anr.

Respondent : their Workers (Madras Union of Journalists)

Advocate for Pet/Ap. : Mr. Ramamurthi

Judgement :
ORDER

Rajagopala Ayyangar, J.

1. These two petitions seek the issue of writs of certiorari to call for the records of the industrial tribunal, Madras, and aside two awards passed by it in which each of these petitioners is interested. The management of the Hindu Madras, are the petitioners in W.P. No. 263 of 1957 while W.P. No. 385 of 1957 has been preferred by the management of the Express Newspapers (Private), Ltd. The common question that arises in both these petitions is as to whether proofreaders employed in their respective establishments are working journalists entitled to the benefits conferred on this class of employees by Chap. II and in particular by Section 6 of the Working Journalists (Conditions of Service and Miscellaneous

Provisions) Act (45 of 1955), to which I shall hereafter refer as the Act.

2. I shall set out a few facts to explain the dispute between the parties and the precise points arising for decision in these petitions.

3. Both the Hindu as well as the Express Newspapers, Ltd., have on their permanent staff the necessary number of 'proofreaders.' Under the conditions of service which prevailed before the disputes now referred to the industrial tribunal for adjudication (?) arose, these employees were required normally to work for eight hours day and six days in every week. In other words, they were required to render 48 hours' work in every week of seven days.

4. While things were in this state, the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act (Act 45 of 1955) was passed which received the assent of the President on 20 December 1955 when it came into force. Its preamble recited that it was enacted 'to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments.' Chapter II of the Act laid down special provisions in relation to 'working journalists.' Section 3(1) with which this chapter opens enacted:

3.(1) The 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, workmen within the meaning of that Act.

These petitions are concerned with the hours of work which may be required of 'working journalists' and in relation to this Section 6 of the Act is the relevant provision. This section runs:

(1) Subject to any rules that may be made under this Act, no working journalist shall be required or allowed to work in any newspaper establishment for more than one hundred and forty-four hours during any period of four consecutive weeks, exclusive of the time for meals.

(2) Every working journalist shall be allowed during any period of seven consecutive days rest for a period of not less than twenty-four consecutive hours,

the peried between 10 p.m. and 6 a.m. being included therein.

It would be seen that under Section 6(1) no working journalist may be required to work for more than 144 hours during any period of, four consecutive weeks. The conditions of service of proofreaders in the two establishments with which these petitions are concerned required them to work for 192 hours during periods of four consecutive weeks. If proofreaders were working journalists, there can be no controversy or dispute that the conditions of service which the statute prescribed had been violated by the establishments who are petitioners here. Their case however was that proofreaders were not working journalists within the meaning of the Act 45 of 1955.

5. The Madras Union of Journalists, a registered trade union, sponsored the cause of the proofreaders in the two establishments and claiming that proofreaders were working journalists required the petitioners to conform to the terms of Section 6(1). The managements however urged that proofreaders could not be treated as journalists within the meaning of the Act and on this ground denied to the union the relief which it claimed on behalf of these workers. This resulted in two industrial disputes concerning the two managements and the Government referred these two by G.O. Ms. No. 2951, dated 16 June 1956, and G.O. Ms. No. 2952, dated 16 June 1956, for adjudication by the industrial tribunal, Madras, under Section 10(1)(c) of the Industrial Disputes Act, 1947, read with Section 3(1) of the Working Journalists Act, 1955. The two disputes were numbered as I.D. Nos. 51 and 52 of 1956, I.D. No. 51 being the dispute between the workers of the Hindu and their proofreaders and the other relating to the Express Newspapers, Ltd. The tribunal heard the two disputes together and by a common order dated 21 January 1957 upheld the case of the union that proofreaders were working journalists within Act 45 of 1955 and awarded to these proofreaders compensation in the shape of five months' wages for the extra hours of work during which they had been compelled to work from 20 December 1955 to the date of the award. It is the validity of this order of the tribunal and the awards that followed that is challenged as illegal in these writ petitions.

6. Three points were raised by Mr. Ramamurthi, learned Counsel for the petitioners, in W.P. No. 263 of 1957,

(1) that the tribunal erred in holding that proofreaders were working journalists,

(2) that assuming that proofreaders were working journalists and entitled to claim the benefit of the statutory condition of service as to the hours of work fixed by Section 6(1) still the tribunal had no jurisdiction to award monetary compensation for the extra hours of work that had been rendered by these workmen, and

(3) that the Hindu newspaper employed in its proof-examining section two classes of workmen, one designated as copyholders and the other proof-examiners, that the reference by the Government to the tribunal for adjudication was concerned only with proof-examiners and the industrial tribunal exceeded its jurisdiction in treating the reference as extending to copyholders also and in awarding relief to them as well. The first two points are also raised by the Express Newspapers, Ltd., but in their establishment there are no workers designated 'copyholders' and hence the third point does not arise in regard to W.P. No. 385 of 1957.

7. It will be seen that the principal point that arises for decision is as to whether proofreaders are entitled to be classified as working journalists who could claim the benefits of Chap. II of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act.

8. The Act itself contains a definition clause and among the terms defined the following are relevent in this context. Section 2(b) defines a 'newspaper' as meaning

any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as may, from time to time, be notified in this behalf by the Central Government in the official gazette.

It is not disputed that both the Hindu and the Indian Express and its allied newspapers-Dinamani and the Andhra Prabha-are 'newspapers' within this definition. 'Newspaper establishment' is defined in Section 2(d) as meaning

an establishment under the control of any person of body of persons, whether incorporated or not, nor the production or publication of one or more newspapers or for conducting any news agency or syndicate.

It is also common ground that the petitioners in these two petitions are 'newspaper establishments 'as herein defined. A 'newspaper employee ' is defined to mean

any working journalist, and includes any other person employed to do any work in or in relation to any newspaper establishment.

The claim of the proofreaders in the present case is that; they are working journalists. The term 'working journalist' has itself received statutory definition and it is the terms of the definition and their precise import that were the subject of debate and argument in these petitions. This definition is contained in Section 2(f) and it will be convenient to set this out in full:

2.(f) 'Working journalist' means a person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any newspaper establishment and includes an editor, a leader-writer, news editor, sub-editor, feature-writer, copy-taster, reporter, correspondent cartoonist, news photographer and proofreader, but does not include any such person who (1) is employed mainly in a managerial or administrative capacity, or (ii) being employed in supervisory capacity, performs either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

It would be seen that proofreaders are specifically enumerated as included in the expression 'working journalists' so that in the absence of any compelling reason the only construction open of the provision would be that this class of newspaper employee was a working journalist.

9. The attempt of Mr. Ramamurthi therefore was directed to pointing out the unnaturalness or inappropriateness involved in designating a 'proofreader' as a journalist understanding the latter term in its etymological sense, with a view to establish a compelling reason for not reading the definition literally. The arguments

on this head were in the main two and they ran on these lines:

10. The definition of working journalist falls into three separate parts:

(i) It means a person whose principal avocation being that of a journalist is employed in a newspaper establishment.

(ii) It includes an editor, etc., and other employees designated there.

(iii) It excludes any such person whose functions are primarily managerial, administrative or supervisory, to adopt a rough summary.

The first limb contains the primary definition of the term. In order to be a working journalist, that person's principal avocation must be that of a 'journalist' besides of course being employed in a newspaper establishment. The word journalist when used in the expression 'working journalist' would imply that the person is a journalist and it is this that is emphasized by this primary definition. 'Journalist' is not defined in the Act and the word has therefore to be understood in its normal etymological sense as explained in dictionaries. The dictionary meaning of the word 'journalist' is the conductor of public journal or one whose business 'it is to write for a public journal; an editorial or other professional writer for a periodical (Webster's New International Dictionary). The Oxford Dictionary defines the expression in almost the same terms. In Funk and Wagnall the term is defined:

One who manages, edits, or writes with some regularity especially one engaged in the literary department of a journal, as an editor, reporter, etc.

If therefore the definition stopped with the first limb,

a proofreader whose duty is mechanical and whose job is just to detect errors in printing and to point them out for correction would not be a journalist.

The argument then ran. The first limb is followed by the second where the workers who satisfy the definition of a journalist are enumerated and these comprise the classes of editor, a leader-writer, news editor, subeditor, feature writer, copy taster, reporter, Correspondent, cartoonist, news photographer and lastly proofreader. Until we reach proofreader all the other types of employees have the

common characteristic of being Journalists as ordinarily understood, those who would fall within the first limb even without specific enumeration. If the second limb had not included proofreaders the function of that part of the definition would have been to set out illustrations of who journalists are or preferably be an almost exhaustive enumeration of the several classes who were comprehended in the term journalist. But when this point is reached, the legislature for no apparent or discoverable reason proceeds to include proofreaders whose work is mechanical and who therefore cannot claim to be journalists. It cannot be that the legislature intended a radical departure when it came to this last class of employees and brought within the definition those who were non-journalists. Counsel therefore urged that only those proofreaders who were otherwise journalists, i.e., who besides proofreading were also employed to do duties as journalists that could be treated as working journalists within Section 2(f).

11. The second line of argument was practically the same as the first but was couched in slightly variant terms and presented from a different angle. Learned Counsel urged that if the enumeration of employees in the second limb of the definition were read in vacuo as one divorced from the first limb so as not to be governed by the two conditions set out in it, namely, the principal avocation being that of a journalist and being employed in a newspaper establishment, a casual correspondent or a casual, reporter would fall within the definition, that is., one whose principal avocation was not that of an editor, a leader-writer, etc., to take the first condition, and it would also include those employed in establishments other than newspaper establishments, that is, if divorced from the second condition in the first limb. If the two limbs had thus to be read together and the conditions of the first limb imported into the enumeration in the second limb, counsel urged that it followed that it was not proofreaders as such but only those proofreaders employed in a newspaper establishment whose principal avocation was that of a journalist that would fall within the definition in Section 2(f).

12. I am unable to agree with the construction which learned Counsel invites me to adopt of this definition of Section 2(f). The only rule for the construction of statutes is that they should be construed according to the intent of the legislature which passed it and that intention has to be gathered from the words which the statute

employs. Where the words used in a statute are not defined, they have no doubt to be understood in their grammatical or popular sense unless the words are technical in which case the special meaning attached to them in their particular fields would be attracted. The subject-matter of the statute, the object of the legislation, the mischief the enactment seeks to remedy or the declared intention of the Act, would be factors throwing light on the precise import of expressions used in the case of any ambiguity. Where, however, a word or an expression is the subject of statutory definition for the purpose of a particular enactment that definition should be adopted for the construction of that word or expression in that enactment; whether the definition accords with its popular or etymological meaning or not, is too well settled to require authority. The Act defines a 'working journalist' and that definition has, unless the context otherwise requires, to quote the opening words of Section 2, to be applied to those words when they occur in Sections 3(1) and 6(1) and there is nothing in the context in Sections 3(1) and 6 requiring the words to be otherwise understood. The definition in Section 2(f) specifically enumerates proofreaders as working journalists. The question for consideration therefore is whether

(a) by any process of construction proofreaders could be held not to fall within the class of working journalists, or

(b) whether proofreaders could be conceived of falling into various classes, some of which could be said to fall within the class of working journalists and some without that class, the employees concerned in the present petitions being treated as falling under the latter class.

Almost the entire argument of Mr. Ramamurthi proceeded on the basis that the classes of employees enumerated in the second limb of the definition in Section 2(f) would not be working journalists unless the duties preformed by them would be treated as those of a journalist and that proofreaders not being journalists as defined in dictionaries and in actual popular parlance, could not therefore be working journalists.

13. I shall assume that the learned Counsel is right in his submission that proofreaders are not journalists and examine how far they could be working

journalists within the definition, on this assumption. If the definition clause stopped with the first limb, that is, if the words of the definition were ' means a person whose principal avocation is that of a journalist and who is employed as such in or in relation to any newspaper establishment' and nothing more, learned Counsel would no doubt establish that proofreaders were not working journalists. But the definition does not stop there. Unfortunately for this argument the first limb is succeeded by an enumerative definition preceded by the words 'and includes.' The words 'and includes' are common legislative device employed in definitions to indicate that the matter or enumeration which follows is really in addition to what might be termed the grammatical meaning of the word defined. In other words, the scope of the expression 'and includes' is really to expand the definition beyond its popular sense. As Lord Watson stated in Dilwork v. Commissioners of Stamps 1899 A.C. 99 :

The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

So understood 'proofreaders' would appear to be comprehended within the definition of working journalists whether they conformed to the description of journalists or not. Learned Counsel was no doubt right in his submission that the conditions laid down by the first limb were also attracted to the employees specifically enumerated in the second limb, but it is not possible by reason of this alone to hold that a specifically enumerated class of employee was taken out of the definition. Learned Counsel could not indeed suggest any construction of this definition which gave some meaning to the word proofreader but still took the workmen concerned in the present petitions outside that class. His argument if accepted would only result in the omission of the words proofreader from the definition. The construction suggested that a person whose principal avocation was that of a proofreader would not be working journalist because he was not a journalist and that proofreaders had been brought in into the definition merely for the purpose of making it clear that if an employee who was a journalist falling

within the other enumerated categories but rendered some service also as a proofreader, he did not cease to be a 'working journalist,' does not give any meaning to the word 'proofreader.' The construction is obviously untenable and I have no hesitation in rejecting it.

14. In this connexion learned Counsel drew my attention to a passage in the report of the Press Enquiry Commission as the basis which the statutory definition in Section 2(f) was founded. In Para. 505 of their report the Commission classified press employees into three categories. The report ran:.It has become necessary for us to have some clear idea as to what is exactly meant by the term 'working journalist.' A working journalist clearly does not mean any person who works in connexion with the production of a journal, be it a daily newspaper or a periodical. There are three types of workers in a newspaper office:

(1) the press workers, i.e., those who are employed in connexion with the composing and printing of a newspaper or a periodical;

(2) the managerial staff employed in the establishment sections, advertisement sections and circulation sections, and

(3) the editorial staff working on a newspaper, comprising' such categories of workers as editors, leader-writers, subeditors, reporters, correspondents, etc.

15. It is the third category that forms the class of working journalists. Proofreaders were dealt within Para. 506 in these terms:

There has been some difference of opinion in the evidence given before us as to whether proofreaders could be regarded as working journalists. Proofreaders as a class cannot be regarded as working journalists, for there are proofreaders even in presses doing job work. In several newspaper offices the proofreading department is attached to the managerial wing of the establishment instead of to the editorial side. The question therefore is whether the proofreaders employed in connexion with the printing of a newspaper or a periodical should be regarded as working journalists. The term proofreader is not understood in the same sense everywhere. It is true that proofreading1 is merely a mechanical process, depending for its

efficiency on the proofreader's knowledge of spelling, syntax, punctuation and grammar. On this account it has been said that they should not be regarded as falling within the category of 'journalists.' On the other hand, it has been pointed out that an efficient sub-editor has to have a knowledge of proofreading, and that in some offices proofreaders are attached to the editorial sections of the paper. It has been stated further that some capable proofreaders eventually came to occupy the posts of sub-editors. It was also said that in some papers, apprentice journalists were first appointed as 'proofreaders.' Whether, in any particular case, a proofreader should be regarded as a working journalist must depend upon the duties assigned to him and the purpose for which he has been employed. If a person has been employed as a proofreader only for the purpose of making him a more efficient sub-editor, then it is obvious that even while he is as a proofreader, he should be regarded as a working journalist. In all other instances, he would not be counted as a journalist but as a member of the press staff coming within the purview of the Factories Act.

Learned Counsel urged that the proofreaders who were included in the definition in Section 2(f) were that class of proofreaders whom the Press Enquiry Commission were inclined to treat as working' journalists and that the other proofreaders were ' newspaper employees' other than 'working journalists.' Without examining the question as to whether this report could be availed of to consider the terms of a definition which raise little ambiguity I am not satisfied that Para. 506 helps the petitioners. The Press Commission conceived of proofreaders as falling within two classes. There is no such classification in the definition, which the statute enacted and which I have now to construe. I cannot therefore assume that proofreaders whom Parliament had in view when it used that term in Section 2(f) were those who were under training for assuming editorial jobs in newspapers. But this apart, even proofreaders whom the Press Commission had in view were those whose principal Avocation during the relevant period was that of proofreading and if they were potential sub-editors the latter was a role which they would occupy only in the future, their employment for the time being was only that of proofreaders. It is because of these circumstances that I feel that the passage is not helpful to the contention urged on behalf of the petitioners.

16. Learned Counsel further urged that the Court is now concerned with the meaning of the words working journalist in Section 6(1) and that no construction should be adopted which would destroy the fundamental idea that before a person could be a working journalist he should be a 'journalist.' In this connexion learned Counsel referred me to the decision of the Supreme Court in Hariprasad v. A.D. Divelkar 1957 A.I.R. 121 : 1957 I L.J. 243 particularly to a passage at pp. 126-127 (247) reading:

there is no doubt that when the Act itself provides a dictionary for the words used we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature. Our task is to get at the intention as expressed in the statute.

Their lordships then proceeded to discuss the meaning of the expression retrenchment as defined in Section 2(oo) of the Industrial Disputes Act, 1947, and wound it up with these words:

What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning1 different from or in excess of the ordinary acceptation of the word which is the subject of definition: but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

I am unable to agree that this passage helps the petitioners. The definition clause expressly names a class of employees well known in the newspaper business as 'proofreaders.' It includes them within the definition of working journalists. In my judgment, in the face of this definition, the Court is precluded from further enquiry as to whether these employees are journalists or not. The definition has stated that proofreaders are working journalists: the Court is not concerned to find out why or on what basis it has included them in the definition but is bound to give effect to it.

17. Mr. Nambiar, learned Counsel for the contesting respondents, urged that proofreaders were journalists and relied on a finding by the tribunal that taking into account the work done by proofreaders they fell within the definition of journalists. Evidence was led before the tribunal as to the precise functions of proofreaders in these establishments. According to this evidence, it was part of their duty to detect mistakes grammatical and even factual in the proofs, take them to the notice of the departmental heads or the sub-editors and get them corrected so that the news as finally printed may not contain mistakes. On this evidence the tribunal recorded:

On the admissions of M.W. 1 with regard to Ex. W. 1(b) it follows that they have been correcting patent, grammatical and idiomatic mistakes. It cannot be denied that almost every employee in a newspaper establishment works under great pressure and practically runs a race with time. The sub-editors who usually prepare the copies are no exception to this practice and they are likely to make mistakes in the copies especially as they very often work during late hours in the nights; as nobody likes his paper to be published with mistakes, it is quite probable that instructions would have been given to these proofreaders to detect mistakes in the copies and to correct them. After a careful consideration of the evidence and the probabilities, I am inclined to accept the case of the union that these proofreaders are doing a part of the journalistic work in these newspaper establishments and, therefore, there is much force in the argument that they must be deemed to be journalists.

Mr. Nambiar contended that this was a finding of fact that proofreaders were journalists.

18. Mr. Ramamurthi, on the other hand, urged that the work which these proofreaders performed was merely mechanical and that type of work could not amount to work as journalist as commonly understood. Mr. Ramamurthi has certainly the high authority of the Press Commission in support of the view that proofreaders as such were not thought of as journalists. In my judgment it is unnecessary for the purpose of this petition to decide whether the finding by the tribunal that proofreaders were journalists was correct or not, though I must say that I am not persuaded it is wrong, because I am clear in my mind that whether

they are 'journalists' or not they are 'working journalists' within the definition of Section 2(f) and this is sufficient for these proceedings.

19. Mr. Ramamurthi next urged that in the establishment of the Hindu the proofreading staff was comprised of two sets of employees designated respectively 'copyholders' and 'proof-examiners,' and that it was only the case of the proof-examiners that was referred to the tribunal for adjudication by the State Government and that the tribunal exceeded its jurisdiction by considering the claims of the copyholders also in the order and award that it passed. As I have stated earlier, this point is confined to writ petition No. 263 of 1957 filed by the Hindu as in the establishment of the Express Newspapers (Private), Ltd., there are only one class of employees called 'proofreaders.' A copyholder is defined in the dictionary as meaning 'a proofreader's assistant, who aids, as by reading, in comparing copy with the proof for detection of errors.' In the Hindu newspaper from the stage when the matter is first composed to the stage of the final publication proofs are read or corrected four times. The evidence before the tribunal was that at the stage of the first or the 'rough proof' the copyholders read from the manuscript or typescript while the proof-examiner had in his nands the first proof to verify (a) whether the print correctly carried the matter in the copy which was read by the 'copyholders' and (2) whether there were printer's devils in it. After the rough proof had been corrected with the help of the two sets of employees the matter went back to the press for the preparation of the next proof called 'author final.' This second proof or the 'author final' was distributed to both the copyholders as well as to proof-examiners for correction, and in doing this, the workers acted individually and not in pairs as they did at the stage of the rough proof. After the 'author final' was corrected, it was sent back to the press and a third proof called 'final galley' was prepared. At this stage also both copyholders as well as proof-examiners did the proofreading which was done individually and not in pairs. The last or the final proof called page proof was also corrected indiscriminately by copyholders as well as by proof-examiners.

20. The contention urged by Mr. Ramamurthi was that copyholders were not comprehended within the expression 'proofreaders' and that no dispute between the management and the class of proofreaders called copyholders was referred to

the tribunal for its adjudication. The tribunal has negatived this contention and in my judgment correctly. It is true some evidence was adduced in this case to the effect that the 'copyholders' had less educational attainments and were less competent than proofreaders and that they were not required to be acquainted with the symbols usually employed in the printing business in proof correction. But I am unable to hold that because of this reason they formed a different class altogether from proofreaders in the Hindu establishment. It would be seen that they corrected three out of four proofs from the 'author final' stage along with the regular proof-examiners. Whatever might be the position in those cases where their duties were as copyholders exclusively, viz., reading from the original for comparison with the print in proof in the case on hand, they were in the Hindu employed substantially as proof-examiners. The mere fact that at the stage of rough proof they assisted in proof correction by reading from the copy themselves not looking into the printed matter, is not a sufficient ground for treating them as other than 'proofreaders' within Section 2(f) of the Act. If I am right so far, their case was also referred to the tribunal when the State Government used the expression 'proofreader' In the reference to the industrial tribunal and the attack on the jurisdiction of the tribunal to deal with this class of employees as if they formed a category distinct and separate from proofreaders is without substance.

21. The last of the contentions urged for the petitioners was that the tribunal exceeded its jurisdiction in granting monetary compensation for the extra hours of work which the employees were called on to perform in excess of that provided by Section 6(1) of the Act. Section 6(1) of the Act, whose terms I have extracted earlier, opens with the words 'subject to any rules that maybe made under this Act.' It is common ground that no rules have so far been made under this Act. In the absence of any rule the tribunal had to proceed to mould the relief for the transgression of the statute, according to the principles of general law. In the case of manual labour whore an employee is required to work overtime the usual rule applied by employers is the payment of double the usual wages for the overtime. That also is the basis upon which industrial tribunals award compensation for overtime in cases of disputes, notwithstanding the absence of a specific provision on these lines in the Industrial Disputes Act. In the absence of any statutory provision in the rules framed under Section 6(1) determining the mode in which the

relief ought to be granted to employees dealt with under Section 6(1), the tribunal was, I am satisfied, competent to award monetary compensation for having had to work overtime. It was not contended that the quantum of compensation awarded was excessive.

22. The result is that these writ petitions fail and are dismissed. The rules issued will be discharged. There will however be no order as to costs.