IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.14251 of 2019 (O&M)
DATE OF DECISION: 06th APRIL, 2022

Dainik Bhaskar Corporation Limited

…. Petitioner

Versus

State of Haryana and others

…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Rajeshwar Singh Thakur, Advocate,
for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana.

Dr. Surya Parkash, Advocate,
Mr. Shailesh Aggarwal, Advocate and
Mr. Vikram Amarnath Garg, Advocate
for respondent No.31.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari quashing the order dated 31.12.2018 (Annexure P-7) passed by respondent No.1; referring the matter to the Labour Court-cum-Industrial Tribunal, Hisar, under Section 17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, for adjudication of the claim of wages of 56 employees i.e. respondent Nos.4 to 59, with a further prayer for staying the impugned order passed by respondent No.1.

The brief facts, as involved in the present case are that the petitioner is a company running newspaper 'Dainik Bhaskar' from

multiple locations. The respondent Nos.4 to 59 are the employees of the petitioner. The respondent Nos.4 to 59 had a dispute regarding the payment of their wages. They had moved applications to the appropriate government/authorities i.e. respondent Nos.1 and 2. The appropriate government found that there was a dispute regarding payment of wages, therefore, the matter has been referred to the Labour Court for adjudication upon the dispute and for determination of the right of the respective parties. Challenging the said reference made by the appropriate government, the present petition has been filed.

The solitary argument raised by learned counsel for the petitioner is that the appropriate government had sent a notice regarding the dispute of only 33 employees, whereas, the reference has been made qua 55 employees. Therefore, the reference made by the appropriate government is in violation of the procedure prescribed under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, the Act). Learned counsel has further submitted that since the notice to the petitioner was given only qua 33 employees, therefore, reference could have been made only qua those employees. As an ancillary argument, learned counsel for the petitioner has submitted that the appropriate government could not have made any reference qua the remaining employees; without giving notice to the petitioner and without coming to the conclusion, after hearing both the sides, that there was a dispute. Unless the intention of the petitioner was known to the government, it is not possible to say that there existed any dispute between the petitioner and respondent Nos.4 to 59. Learned counsel for the petitioner has relied upon the judgment rendered by this

Court in ***Jagran Parkashan Limited Versus State of Punjab and others, CWP No.16275 of 2018, decided on 25.03.2019***.

To ascertain the fact whether the appropriate government ever received any application from the employees, other than 33 or not, the State was asked to file affidavit in this regard. The affidavit was filed by the State, wherein it has been asserted that the claim of 56 employees was received. Since, the claimed amounts had not been paid by the petitioner, therefore, in the opinion of the government, there existed a dispute. Since, the dispute required adjudication by the adjudicatory body as required under Section 17 (2) of the above said Act, therefore, the matter was rightly referred to the Labour Court for proper adjudication and decision.

In view of the above, it is clear that so far as the State Government is concerned, it had received the claim of 56 employees. The said employees had raised a dispute regarding non-payment of their wages. Finding substance in the claim of the employees, the matter qua 56 employees has been referred.

Learned State counsel has filed an affidavit in response to the order of this Court dated 22.03.2022, which is taken on record.

Before appreciating the arguments raised by learned counsel for the petitioner, it is appropriate to have a reference to the provisions as contained in Section 17 of the Act, which are reproduced as under:-

> *"17. Recovery of money due from an employer.-*
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> *(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 same 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 under 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 referred 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).”

A perusal of the above said provisions shows that Section 17 of the Act contains two provisions qua the recovery. Sub Section (1) of

Section 17 makes a provision for recovery of the amount of wages which is determined amount or not in dispute; in the opinion of the appropriate government. Under the said provision, the appropriate government is authorized to issue certificate of recovery and ask the Collector to affect the recovery of the amount as arrears of land revenue, in accordance with law. However, if the appropriate government is of the opinion that the amount is not determined amount or there is any question regarding the said amount, the said aspect is required to be referred to an Adjudicatory Mechanism, as required under sub Section (2) of Section 17 of the Act. The State Government has done that much only. Hence, the action of the appropriate government is found to be perfectly in tune with the provisions of Section 17 of the Act.

The main argument of learned counsel for the petitioner is that the reference has been made without giving any notice to the petitioner-employer and that unless the intention of the petitioner was known; it could not be said that there was any dispute which could be referred to the Adjudicatory Mechanism. However, this is not the import of sub Section (2) of Section 17 of the Act. This provision does not even use the word 'dispute', rather it uses the word 'question' which may arise as to the amount. Although even this Court had asked whether the petitioner is ready to accede the claim of respondent Nos.4 to 59, so as to obviate the possibility of any 'dispute' and to substantiate the argument that there does not exist any dispute between the parties, however, learned counsel for the petitioner has expressed his inability to say that the petitioner can accept the claim of respondent Nos.4 to 59, as such. Otherwise also, sub Section (2) of Section 17 of the Act does not require

any notice to the employer before making a reference to the Adjudicatory Mechanism. In that regard, the procedure prescribed under this Act is different than the procedure prescribed under the Industrial Disputes Act, 1947. While under the Industrial Disputes Act, the conciliatory procedure mandates giving of notice and granting an opportunity of hearing to the employer to reconcile the matter and to determine whether there exists any dispute or not, under Section 17 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, such conciliatory procedure is not contemplated. The Industrial Disputes Act or other law is made applicable only to the proceedings before the Labour Court. After order of Labour Court, the recovery is, again, to be effected under Section 17 (1) of the Act as per the provision contained in Section 17 (3) of the Act. The provision Section 17 casts a duty upon the government to, firstly effect recovery of the amounts, if the amounts are already determined and if the amounts are not clear and the employee has approached the government qua non-satisfaction of his claim qua the wages amount, then government has to refer the dispute to the Adjudicatory Mechanism. The government can refer the question of amount to the Adjudicatory Mechanism *suo moto*, even without application from any employee. In view of this legal conspectus, the employer does not come into picture, at all, till the reference is made by the government to the Adjudicatory Mechanism. Needless to say that the Adjudicatory Mechanism is intended to ensure only to provide an opportunity of hearing to the employer qua the question of claim raised by the employee. While the employer has a right to be heard for determination of the question, it cannot claim any hearing

as such; before making of the reference by the appropriate government under sub Section (2) of Section 17 of the Act.

Although learned counsel for the petitioner has relied upon the judgment rendered by this Court in the case of ***Jagran Parkashan Limited (supra),*** however, that judgment is not relevant to the controversy involved in the present case. That case, exclusively, related to the power of the Assistant Labour Commissioner to make a reference and it was held that the said authority did not have the power to make a reference. In the present case, that is not even the argument raised by learned counsel for the petitioner that the authority which has made the reference was not authorized to do so. The argument is only qua requirement of notice before making any reference. Hence, the judgment rendered by this Court in case of ***Jagran Parkashan Limited (supra)*** is totally distinguishable, rather, is on altogether a different aspect. Hence, the same is not helpful for the case of the petitioner, in any manner.

In view of the above, finding no merit in the present petition, the same is dismissed.

The pending miscellaneous applications, if any, are also disposed of as such.

06th APRIL, 2022 **(RAJBIR SEHRAWAT)**
'sandeep' **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*