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Reserved on 16.02.2023

Delivered on 21.02.2023

Court No. - 34

Case :- WRIT - C No. - 659 of 2023

Petitioner :- The Indian Express Pvt. Ltd.

Respondent :- Union Of India And 15 Others

Counsel for Petitioner :- Sunil Kumar Tripathi, Devesh Tripathi, Sandeep Pandey

Counsel for Respondent :- A.S.G.I., Ankur Goyal, C.S.C., Ramesh Chandra Tiwari

Hon'ble Saurabh Shyam Shamsbery, J.

1. The issue which requires consideration in present case is, “whether Prescribed Authority under Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter referred to as “Act, 1955”*) can consider a claim filed by workmen under Section 17(1) of Act, 1955 despite the it being a disputed claim?”

2. Learned counsel for parties have not seriously disputed the legal position with regard to above referred issue that application by a newspaper employees is to be filed under sub-section (1) of Section 17 of Act, 1955 as per Rule 36 of Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957 (*hereinafter referred to as “Rules, 1957”*). That application can be filed before State Government or such authority, as the State Government may specify in that behalf. Where there exists no dispute, the State Government or authority, so specified, upon being satisfied that any amount is so due, shall issue a certificate for that amount to Collector and Collector would, thereafter, recover that amount as an arrears of land revenue. Where a question or dispute arises then a reference is to be made to Labour Court for adjudication of dispute. After adjudicating the dispute, Labour Court has to forward its decision to State Government or authority which made the reference, upon which the amount is to be recovered in the manner provided by sub-section (1) of Section 17 of

Act, 1955. Since Section 17, as a whole, creates a single seamless scheme, the State Government, in exercise of its power under sub-section (1) can specify an authority to do all acts which it has power to do under Section 17 of Act, 1955.

3. Respondents-workmen of petitioner-Company, i.e., Indian Express Pvt. Ltd., have claimed that they have provided their services even during period in question, i.e., 01.04.2020 to 28.02.2021, when the country was facing adverse situation due to Covid-19 Pandemic, however, still employer has deducted certain percentage of their monthly salary and since amount was pre-determined, therefore, Prescribed Authority under Section 17(1) of Act, 1955 has jurisdiction to allow claim.

4. Sri Sunil Kumar Tripathi, learned counsel for petitioner has vehemently argued that it is not the question about determination of amount deducted as there is no dispute that said amount was deducted. Question before Prescribed Authority was that when employer has come up with a case that deduction was legal and contrary to it respondents-workmen have submitted that it was an illegal deduction, therefore, a dispute arose about legality of deduction, which could not be decided by Prescribed Authority under Section 17(1) of Act, 1955 and correct procedure was to refer a reference to Labour Court for adjudication of dispute.

5. Learned counsel for petitioner has further submitted that petitioner has also challenged notification dated 29.03.2020 issued by Ministry of Home Affairs, New Delhi in exercise of powers conferred under Section 10(2)(I) of Disaster Management Act, 2005 that District Magistrate shall take measures that all the employees, be it in industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on due date, without any deduction, for the period their establishments are under closure during lockdown.

6. Learned counsel has further submitted that impugned notification is arbitrary and without considering that employer has suffered financial loss due to irregular publication of newspapers and magazines during lockdown

period, therefore, they cannot be forced not to deduct any salary. He, however, fairly submitted that direction in impugned notification was not considered either directly or indirectly in impugned order.

7. Sri Ramesh Chandra Tiwari, learned counsel for respondents-workmen, also vehemently argued that workmen have continuously worked even during the period of lockdown and thereafter also and ensured that publication may not be discontinued and that newspapers were published and circulated effectively initially through online mode and thereafter by physical circulation. Period of deduction of salary was beyond the lockdown period also. No reason was afforded prior to deduction and no prior notice was issued. Amount was not disputed as well as employer has not disputed that during relevant period publication was regular and in this regard he referred the finding returned in impugned order. Learned counsel also referred a gazette notification dated 12.11.2014 that Prescribed Authority has power to consider application filed under Section 17(1) of Act, 1955. In support of above submission learned counsel has placed reliance on Supreme Court's judgment in **Ficus Fax Private Ltd. and others vs. Union of India and others (Writ Petition (C) Diary No. 10983 of 2020, decided on 20.06.2020** and this Court's judgment in **Pradhan Prabandhak/ Uniot head M/s Amar Ujala vs. State of U.P. and others (Writ-C No. 11856 of 2018), decided on 31.05.2018.**

8. Heard learned counsel for parties and perused the material available on record.

9. As referred above, position of law with regard to power under Section 17(1) of Act, 1955 is unambiguous that in case there is a dispute with regard to determination of amount the Prescribed Authority shall refer a reference to Labour Court.

10. In the present case, it is not in dispute that certain percentage of salary was deducted for relevant period, therefore, amount deducted was not in dispute. However, since a controversy was arose before Prescribed Authority that, whether or not employer has power to deduct the amount as well as

whether or not deduction was legally permissible and for that parties before Prescribed Authority have exchanged pleadings and led oral evidence also. Prescribed Authority has entered into arena of disputed questions and considered pleadings and oral evidence and recorded a finding that since undisputedly publication was regular and respondents-workmen were working regularly, therefore, deduction was illegal or not permissible and proceeded to pass order against petitioner and in favour of respondents-workmen. Since Prescribed Authority has entered into arena of dispute to determine legality of deduction, therefore, it has acted beyond its jurisdiction provided under Section 17(1) of Act, 1955 and committed legal error by not making reference to Labour Court.

11. Accordingly, impugned order dated 07.12.2022 is hereby set aside. Prescribed Authority is directed to refer dispute to Labour Court within a period of two weeks from today in accordance with provisions of Act, 1955 for its determination. The Labour Court is also directed to conclude proceedings within a period of six months thereafter, subject to other business of Court.

12. Petitioner-Employer is also at liberty to have a meeting with respondents-workmen, who have supported their employer during Covid-19 Pandemic, to settle the dispute with regard to deduction of salary even beyond lockdown period and if possible refund a proximate money to them.

13. So far as challenge to notification dated 29.03.2020 is concerned, no reference was made during impugned proceedings and there is no challenge to power under which said notification was issued. Nothing has been brought on record that any adverse order has been passed in pursuance of said notification. Accordingly, prayer to quash notification dated 29.03.2020 is hereby rejected.

14. With aforesaid directions/observations the writ petition is disposed of.

Order Date :- 21.02.2023

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