

Reserved

Neutral Citation No. - 2023:AHC:174581

Court no.25

Through Video Conferencing from Lucknow Bench

Case :- CIVIL MISC REVIEW APPLICATION No. - 351 of 2023

Applicant :- Jagran Prakashan Ltd

Opposite Party :- Shri Aman Kumar Singh And 4 Others

Counsel for Applicant :- Chandra Bhan Gupta

Counsel for Opposite Party :- C.S.C., Man Mohan Singh

AND

Case :- CIVIL MISC REVIEW APPLICATION No. - 376 of 2023

Applicant :- M/S Jagran Prakashan Limited

Opposite Party :- Kishan Lal And 4 Others

Counsel for Applicant :- Chandra Bhan Gupta

Counsel for Opposite Party :- Man Mohan Singh

Hon'ble Pankaj Bhatia,J.

1. By means of an order dated 11.08.2023, the arguments of the parties were heard and the judgment was reserved on the review applications filed by the petitioner seeking review of the judgment and order dated 27.04.2023 passed in Writ-C No.10419 of 2023 with connected Writ C No.23212 of 2021.
2. As recorded in the order dated 11.08.2023, the submission of the counsel for the applicant/petitioner was that this court has erred in not deciding the other issues as is clear from the para-19 of the judgment. He had further argued that in para 33, the reference to Section 12 was erroneous as the said section only enables the Central Government to notify the award. It was further argued that this Court holding the newspaper establishment to be falling under Clause-I in para 36 was erroneous in view of the pleadings of the employees themselves in para 17 of the affidavit filed by them in support of their claim before the Labour Court.
3. The counsel for the respondents had opposed the review application

and the arguments were duly recorded in the order dated 11.08.2023.

4. To test the arguments raised by the counsel for the applicant in support of the review applications, I propose to deal with para 19 of the judgment, wherein the following was recorded :

"In view of the submissions made and recorded above between the parties, what emerges is that the sheet anchor of the argument of the petitioner is that once Clause 20(J) of the Wage Board is in existence and has been notified as such, any claim over and above the undertaking given by the employees would not be maintainable. I propose to decide this issue prior to going into the other issues in respect of the manner of decision making, as argued by the counsel for the petitioner."

5. The submission of the counsel for the applicant in respect of there being error in para 19 cannot be accepted as in the pleadings exchanged before the Labour Court, the only pleading as raised by the petitioner and the applicant herein was that in view of an agreement executed in between the parties in terms of the mandate of Clause 20(J) of the Wage Board, any amount claimed over and above the agreement would not be maintainable. The said issue was clearly and squarely decided by this Court in its judgment by holding that any agreement which grants the benefits which are lower than what were recommended by the Wage Board would be contrary to the mandate of Section 13 and 16 of the Act in question. As no pleadings with regard to the amount claimed was raised by the petitioner before the Labour Court and their defense was confined to the agreement executed in between the parties in terms of clause 20(J) of the Wage Board and that issue was decided, there was no further need for deciding any other issues as argued by the petitioner, more so, in view of the fact that other arguments were with regard to examination and cross-examination done only to establish that the parties had entered into an agreement in terms of the mandate of Clause 20(J). Even in the present application in paragraphs no.14 and 31, the stand of applicants is the same. Thus, I do not see any reason to interfere with the findings recorded in para 19 or to come to a conclusion that any other issue remained to be decided after rendering

a finding that in no case can there be any agreement to the detriment of the employee in pursuance to Clause 20(J) or proviso to section 16 as the same would be offending the mandate of Section 13 and Section 16 of the Act.

6. Coming to the second argument with regard to mention of Section 12 in para 33 of the said judgment, the argument of Sri Kaushal, learned Senior Advocate that reference to Section 12 was an error as Section 12 was an enabling section giving powers to the Central Government to notify the recommendations made by the Wage Board, the said argument also deserves to be rejected inasmuch as Section 12 of the Act not only enables the Central Government to notify the recommendations of the Wage Board, the scope of the said section is much wider, more so in view of the mandate of sub-section (3) to Section 12. The judgment, is however clarified to the extent that Section 12 refer to in para 33 of the judgment shall be construed to mean Section 12 (3) of the Act.
7. Coming to third submission of the learned counsel to the effect that in the pleadings in para 17 of the affidavit, the respondents themselves had claimed the Newspaper to be a Class II Newspaper in terms of the classifications recommended by the Wage Board, the said argument also deserves to be rejected in view of the affidavit filed by the respondents in support of their pleadings and reflected in para 17, which is as under :

"I say that the Management herein is a "Newspaper Establishment" in terms of Section 2(d) of the Act. The Establishment has been Incorporated and registered under Companies Act is styled as M/s Jagran Prakashan Ltd., conducting its business by publishing Hindi newspaper daily "Dainik Jagran" and various other publications of periodicals/tabloids etc., circulated all over India through its offices/branches/agencies. In terms of the recommendations of the Wage Board contained in Chapter XIX, Section II, Clause 6, the present management is classified as Class II newspaper establishment as on the date of enforcement of the recommendations of Wage Board on the basis of Its gross revenues in the years 2007-08 (Rs.771.15 crore), 2008-09 (Rs.846.13 crore) and 2009-10 (Rs.976.11 crore)

averaging above Rs.500 crore but less than Rs. 1000 crore. The revenues of Management herein rose upwards in the years 2010-11 (Rs.1138.42 crore), 2011-12 (Rs.1289.71 crore) thus averaging above Rs.1000 crore classifying the Management as Class I Newspaper Establishment after 01.04.2012 in terms of Clause 7 of Chapter XIX Section II of the award of Wage Board. I have therefore calculated the amounts payable from 11.11.2011 to 31.03.2012 on the basis of pay scales fixed for Class II Establishment and from 01.04.2012 onwards of the basis of scales for Class I Newspaper Establishment."

8. The said affidavit was never controverted by the petitioner in the proceedings. Even in cross examination by petitioner contained in Annexure 37, there was no attempt by petitioner to discredit the said members specifically mentioned in paragraph 17 extracted above. No dispute with regard to revenue has been raised even in the present petition, the only dispute raised was that classification should have been in a different category keeping in view that the petitioner's establishment at Noida was separate and distinct from the other branches of the petitioner's company. The said argument was duly noted in the earlier judgment and was dealt with. Even in the present review application, no material is brought forward to demonstrate that the unit of the petitioner working at Noida is a separate and distinct company and has no concern with the other printing business of the petitioner elsewhere. Equally, there is no material to demonstrate that the unit at Noida is a self controlled unit without there being any pervasive control of the petitioner company. Thus, the said argument of Sri Kaushal, Senior Advocate also merits rejection.
9. The other argument of Sri Kaushal with regard to the fact that the respondents themselves had pleaded that the Newspaper Establishment was classifiable under Clause II and could not have been stepped up by more than two grades also merits rejection in view of Clause 3 of the Majithia Board recommendations contained in Section II and duly notified under section 12 and the same is as under :

3. Classification of newspaper Establishments- For the

purpose of fixation or revision of rates of wages in respect of working journalists and non-journalists newspaper employees (other than the news agencies), the newspaper establishments shall be classified hereinafter provided :

- a)(i) The classification of newspaper establishments shall be based on the average gross revenue of three accounting years 2007-08, 2008-09 and 2009-10. The different departments, branches and centres of newspaper establishments shall be treated as parts thereof.*
- (ii) Notwithstanding the clubbing of different departments, branches and centres of newspaper establishments on the basis of their own gross revenue, the units of the newspaper establishments of all the classes as categorized in paragraph 6 of this Chapter shall not be stepped up by more than two classes over and above the classes to which they belong according to their gross revenue, as a result of their clubbing.*

Explanation - For the purpose of this clause,

- (a) If there are different units/branches/companies of one classified newspaper establishment in one town or city and adjoining areas, even though carrying different names, these will be treated as one single unit of that newspaper establishment.*
- (b). In the case of a newspaper establishment completing two out of the aforementioned three (3) accounting years, its classification shall be determined on the basis of its average gross revenue for those two years.*
- (c) In the case of a newspaper establishment which has completed only one year of the said accounting years, its classification shall be determined on the basis of its gross revenue for that year.*
- (d) A new newspaper establishment, for which the provisions of clauses (a), (b) and (c) above do not apply, is liable to be classified after the completion of its first accounting year on the basis of its gross revenue for that year.*

Provided that-

Notwithstanding anything contained in clauses (b), (c) and (d) above, a newspaper establishment which is classified on the basis of two (2) accounting years shall be placed one class lower than the class in which it is liable to be placed and a newspaper establishment, which is classified on the basis of one accounting year, shall be placed two classes lower than the class in which it is liable to be placed. In either case, it shall not be lower than Class VIII.

10. Even otherwise, from the pleadings and the arguments, there appears to

be no effort by the petitioner to seek reclassification of a Newspaper Establishment as is amended in terms of Clause 7 (2) of the Majithia Wage Board recommendations which are quoted herein below :

7. Continuance of classification and reclassification

(1)

(2) *It shall be open either to the employer or to the employee to seek a reclassification of a - newspaper establishment at any time after one year from the date of the enforcement of the Award on the basis of the average gross revenue of the three immediately preceding accounting years;*

Provided that such reclassification should not be sought more than once in any period of three consecutive accounting years.

Provided that any such reclassification made as per paragraph 7 (2) is required to be adjusted towards the price escalation worked out on the basis of wholesale price index with effect from the financial year just before the implementation of the Majithia Wage Boards Awards."

11. Before rejecting the review application on the reasonings as recorded above, it is essential to deprecate the conduct of the petitioners who have continued to avoid the enforcement of the Wage Board recommendations from the date of notification on 11.11.2011 and have resorted to taking defenses by taking shield of the agreements which give the benefits which are less than what were recommended by the Wage Board and have continued to deny the benefits on one ground or the other, thus, frustrating the entire scheme of the Act and the benefits which flow in favour of non-journalist newspaper employees for years together.
12. This Court had given the judgment on 27.04.2023 wherein a cost of Rs.25,000/- (Twenty Five Thousand) was also imposed, the applicants have successfully avoided the implementation of the award and the judgment by filing an appeal which was not maintainable before this Court and after having failed in the said appeal, have filed the review application.
13. The review application on merits as well as the conduct of the

petitioner deserves to be rejected and is accordingly *rejected* with a cost of Rs.10,000/- (Ten Thousand) to be paid to each of the employees who have filed a claim petition. The adjudicatory authority while enforcing the award shall also recover and pay a cost of Rs.10,000/- to each of the claimant who have approached the adjudicatory authority for payment of their claims.

14. As regards the review application No.376 of 2023 in Writ-C No.23212 of 2023 which was decided along with the judgment dated 27.04.2023 dismissing the writ petition, which was earlier entertained by this Court, I do not see any reason to review the judgment as the issue arising in both the writ petitions were common.

15. With the said observations, both the review applications stand *rejected*.

Order Date :- 29th August, 2023.

VNP/-

[Pankaj Bhatia, J]