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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 25th OF APRIL 2022

WRIT PETITION No. 22633 of 2019

Between:-

NEERAJ S/O SANTOSH KUMAR SHUKLA,
OCCUPATION: NEWS EDITOR DAINIK
BHASKAR RATLAM, R/O F-360 DINDAYAL
NAGAR RATLAM (MADHYA PRADESH)

.....PETITIONER

AND

- SUDHIR AGRAWAL OCCUPATION:
MANAGING DIRECTOR DB CORP LIMITED
1. DAINIK BHASKAR NEWS PAPER, ADDRESS
DWARKA SADAN 6 PRESS COMPLEX MP
NAGAR BHOPAL (MADHYA PRADESH)
 2. PRABHANDAK/PRESS MALIK D.B. CORP
LIMITED, DAINIK BHASKAR PATR, ADDRESS
4/54, PRESS COMPLEX, AB ROAD, INDORE
(MADHYA PRADESH)

.....RESPONDENT

VIVEK RUSIA,J. passed the following:-

ORDER

Shri Ketan Vishnar, learned counsel for the Petitioner.

Shri Jagdish Baheti, learned counsel for the Respondents.

The petitioner has filed the present petition being aggrieved by the order dated 12.04.2019 passed by Labour Court, Ratlam in case No.22/2018 whereby an application filed under Section 33 of

Industrial Disputes Act, 1947 read with Section 151 of C.P.C. has been dismissed.

[1] The petitioner has approached the Labour Court in a pending reference by way of filing statement of claim seeking implementation of recommendation of **Majithia Pay Board** and claiming regular wages as well as arrears of wages w.e.f. 01.07.2010 Rs.75,82,249/- with interest.

[2] According to the petitioner, he was appointed as News Reader on 27.05.2000 and since 30.05.2016, he is working as News Editor. In compliance of the judgment dated 07.02.2014 passed by Apex Court in Writ Petition No. (Civil) No.246/2011, he is entitled for benefit of the pay scale as per the recommendation of Majithia Pay Board but the respondents are not intending to give the benefit.

[3] In the pending reference, he has filed an application under Section 33 of Industrial Dispute Act, 1947 seeking injunction against the respondents that during pendency of reference they be restrained to change his services conditions or transfer him to some other place. The said application came up for consideration on 12.04.2019 and same came to be dismissed. Learned Court has declined to restrain to respondent to transfer him to the Office at Gaya (Bihar) and also declined to prosecute under section 25 (T) (U) for adopting unfair labour practice. Hence, present petition before this Court.

[4] After notice, the respondents have filed reply that the petitioner is holding transferable post hence he can be transferred as per terms and condition of the appointment order as well as service condition. On administrative ground, he has been transferred Office of Gaya (Bihar) but due to malafide intention he

did not join there. It is further submitted by the learned counsel that during pendency of the aforesaid reference, respondents have issued deputation letter on 16.03.2019, since the petitioner did not join the transferred place, the respondents have conducted domestic enquiry and passed the order of termination on 05.12.2019. The petitioner has filed an application (I.A. No.110/2020) under Section 16A of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as " Act, 1955") seeking stay of the order of termination , which has been rejected by the learned Labour Court.

[5] Learned counsel for the petitioner submits that under Section 33 of Industrial Dispute Act, 1947, the respondents are not permitted to change the service conditions by transferring him from the present place of posting. They have violated the provisions of Section 25 (U) by committing unfair labour practice. Section 16A of the Act, 1955 prohibits that no employer in relation to a newspaper establishment shall, by reason of his liability for payment of wages to newspaper employees shall dismiss, discharge or retrench any newspaper employee, therefore, interim order is liable to the petitioner. It is further submitted that all the provisions of Industrial Dispute Act,1947 applies to working journalist and other news paper employees, therefore, provision of Section 33 of Industrial Dispute Act, 1947 also applies to the petitioner and in violation of the aforesaid, the respondent has wrongly transferred the service of the petitioner.

[6] Respondents have filed the reply by submitting that the petitioner has filed the present petition against the order dated 12.04.2019, whereby the Labour Court has declined to grant

permission under Section 33 of Industrial Act, 1947, thereafter, petitioner has been transferred and terminated from the services, therefore, the said relief rendered infructuous. The petitioner is required to challenge the order of termination before the Labour Court in accordance with law. The petitioner is not challenging the validity of the termination order in this petition by way amendment. In absence of the main relief, the interim relief cannot be granted. So far as applicability of Section 33 of Industrial Dispute Act, is concerned, the said provision applies by virtue of Section 3 of Act, 1955, hence prays for dismissal of Writ Petition.

Heard....

[7] The learned Court has dismissed the application as Section 17(2) of the Act, 1955 does not talk about any change of service condition.

Section 3 of the Act of,1955 is reproduced below:-

3. Act 14 of 1947 to apply to working journalists.—(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.

(2) Section 25F of the aforesaid Act, in its application to working journalists, shall be construed as if in clause (a) thereof, for the period of notice referred to therein in relation to the retrenchment of a workman, the following periods of notice in relation to the retrenchment of a working journalist had been substituted, namely:— (a) six months, in the case of an editor, and (b) three months, in the case of any other working journalist.

[8] Learned Labour Court has failed to examine that the Act, 1955 only regulates the certain conditions of service of working employees and other persons working in the Newspaper establishment. Under Section 3, the provisions of the Industrial Dispute Act,1947 have been made applicable to the working

journalist as they apply to or in relation to the workman within the meaning of this Act., therefore, section 33 of the Industrial Dispute Act applies in the pending reference under Section 17(2) of the Act, 1955. The working journalist are having the same protection as has been given to the workman under the Industrial Dispute Act,1947. Apart from this Section 16A of the Act, 1955, also gives protection to the working journalist and other employees.

16A. Employer not to dismiss, discharge, etc., newspaper employees.—No employer in relation to a newspaper establishment shall, by reason of his liability for payment of wages to newspaper employees at the rates specified in an order of the Central Government under section 12, or under section 12 read with section 13AA or section 13DD, dismiss, discharge or retrench any newspaper employee.

Admittedly, during pendency of reference before the Labour Court, the respondents have transferred the petitioner and thereafter terminated him from services due to non-compliance of transfer order. The Trial Court is required to examine whether the petitioner has been transferred in order to victimize him as he is claiming the implementation of Majithia Pay Board which might casts heavy financial liability on the respondent and in such situation provision of Section 16A of the Act, 1955 will apply or not, therefore, matter is remitted back to the Labour Court to examine the act of the respondents under Section 33 of Industrial Act, 1947 as well as Section 16A of the Act, 1955.

In view of the above, petition is disposed of.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE