IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 31.01.2024

ORDER PRONOUNCED ON : 15.04.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.6343 of 2022

S.Madhavan

...Petitioner

Vs.

M/s.THG Publishing Pvt. Ltd.
(formerly M/s. Kasturi & Sons Ltd.)

...Respondent

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records of the Principal Labour Court, Chennai, in Complaint Petition No. 1 of 2020 in I.D.No.205 of 2016 dated 19.08.2021 and quash the same.

For Petitioner : Mr.S.Madhavan
party-in-person

For Respondent : Mr.G.Anand gopalan
for T.S.Gopalan & Company.

ORDER

Writ petition is filed challenging the Award passed in Complaint No.1 of 2020 in I.D.No.205 of 2016.

2.The background of facts leading to the writ petition are that the respondent is a newspaper establishment in terms of the Working Journalist and Other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act 1955 (Herein after called Working Journalist Act).

3.The Central Government constituted Majithia Wage Board for revision of wages of newspaper establishments. The respondent is a newspaper establishment and is engaged in the business of publishing newspaper for more than 143 years. The Majithia Wage Board constituted by the Central Government gave its recommendations to the Government on 31.12.2010 proposing wage revision from 01.07.2010. The aforesaid recommendations were accepted by the Central Government and vide order dated 11.11.2011, the Award of the Wage Board was published by

the Government. The Majithia Wage Board recommendations were challenged by various newspaper establishments before Hon'ble Supreme Court under Article 32 of the Constitution of India. The Hon'ble Supreme Court in its order dated 19.06.2017 confirmed the Majithia Wage Board Award. However, the Hon'ble Supreme Court modified the effective date of the Award from 01.07.2010 to 11.11.2011. It is stated that the dues of the employees were settled by the respondent in 2014-2015 itself. The writ petitioner and few other employees of the respondent approached the Government claiming that they were entitled to difference of higher Dearness Allowance in terms of the Majithia Wage Board Award, the Government therefore referred the matter under Section 17 of the Working Journalist Act. The reference was numbered as I.D.No. 205 of 2016. It is the petitioner's case that during the pendency of the said I.D. the respondents retrenched the petitioner from service with effect from 01.07.2020. According to the petitioner the retrenchment order was in violation of the provisions of Sections 25-G and 25-F of the I.D. Act. The petitioner therefore filed the complaint and it was numbered as Complaint No.1 of 2020 under Section 33-A of the I.D. Act. for violation of Section 33 of the I.D. Act.

4.The respondents case was that as the business of the respondent declined and as it faced financial difficulties, in order to ensure viability and continuity in the business, the respondent had to retrench the employees who were found to be redundant. The petitioner who was working in the editorial department had to be retrenched, as his position was found to be redundant in the said department. The respondent therefore stated that in the interest of the establishment, the petitioner was issued with the letter dated 22.06.2020 stating that his services were no longer required, thereby putting an end to his employment. The petitioner was paid with 3 month notice pay in terms of the appointment order. The petitioner therefore filed the complaint under Section 33-A of the Industrial Disputes Act before the Labour Court. The Labour Court vide its impugned Award dismissed the complaint. Aggrieved by the impugned Award, the petitioner has filed the above writ petition.

5.The petitioner as party-in-person before this court submits that the Labour Court erred in rejecting the complaint on the premise that no dispute was pending in terms of Section 33 of the I.D. Act and further erred in relying on the Judgment of the Hon'ble Supreme Court in the case

of Bhavnagar Municipality vs. Alibhai Karimbhai and others to conclude that retrenchment did not amount to alteration of the conditions of service. The petitioner further submitted that the Labour Court failed to note that in Bhavnagar Municipality case, it was clearly stated that the complaint made under Section 33-A was akin to a reference under Section 10(1) of the I.D. Act and as such the Labour Court was bound to decide on the validity of the retrenchment order passed by the respondent.

6.The learned counsel for the respondent on the other hand submitted that the Labour Court on proper appreciation of the entire materials gave its finding on facts and law and therefore the same did not call for any interference by this Court. The learned counsel submitted that there was no perversity in the award of the Labour Court and as such this Court should not interfere with the Award while exercising jurisdction under Article 226 of the Constitution of India. The learned counsel further submitted that the dispute before the Labour Court was not an industrial dispute as the industrial dispute referred to in Section 33 did not cover a reference under Section 17 of the Working Journalist Act, but covered disputes raised under Section 10(1) of the ID Act. In other words it was

submitted that it is only a dispute which is referred under Section 10(1) of the I.D Act that can be called as industrial dispute for the purpose of Section 33. The learned counsel further submitted that Section 17 of the Working Journalist Act, was similar to Section 33(C)(2) of the I.D. Act, being more in the nature of computation petition and therefore adjudication of a question referred by the Government under Section 17 of the Act cannot be equated to an industrial dispute as defined under the I.D Act. The learned counsel on the aforesaid submissions stated that the complaint under Section 33(A) was rightly rejected by the Labour Court.

7.I have heard party-in-person and the learned counsel for the respondent and I have perused the materials placed on record.

8.The issue to be decided in this writ petition is whether the rejection of the 33(1)(a) complaint of the writ petitioner is valid or not.

9.It is the contention of the learned counsel for the petitioner that the reference of the question to the labour Court under Section 17(2) of the Working Journalist Act, is equivalent to a reference of a dispute under the

ID Act and hence, Section 33 of the Act is attracted. It is further contended that as the petitioner was retrenched pending 17(2) proceedings there is a violation of Section 33(1)(a) and hence, the complaint should have been allowed. In contra, the learned counsel for the petitioner submitted that the reference of the question under Section 17(2) of the Working Journalist Act, was akin to a claim petition filed under Section 33(c)(2) of the ID Act and therefore, Section 33 was not attracted. It is also contended that the complaint under Section 33(1)(a) could be sustained only if violation of Section 33 was established. It is further contented that to attract Section 33, the pendency of an industrial dispute should be established. It is therefore, the contention of the learned counsel for the respondent that the petitioners having failed to establish the aforesaid, the labour Court had rightly rejected the complaint. In the labour Court the jurisdiction of the Court to entertain the reference was raised, but it was answered against the respondent. The respondent seeks this Court to consider the issue by placing reliance of 41 Rule 22 C.P.C., I do not propose to undertake the said exercise as I am of the view that it is sufficient to answer the other issue.

10.It is not disputed that the claim of the petitioner for difference in Dearness Allowance for the period 11.11.2011 is based on the Award of the Majithia Wage Board, which was approved by the Government of India on 11.11.2011 and confirmed by the Hon'ble Supreme Court in W.P.(Civil)No.246 of 2011 on 07.02.2014. The petitioner's raised a dispute claiming difference in Dearness allowance and the same was referred to the Labour Court by the Government of Tamil Nadu in G.O.(ID) 441 dated 21.07.2016 under Section 17 (2) of the Working Journalist and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act 1955. During the pendency of the said reference in the present 205/2011 the petitioner's were retrenched and hence the complaint under Section 33(1) (a) of the I.D. Act was filed. Let me now refer to the provisions of the Working Journalist Act as well as the ID Act which are relevant for the purpose of this case. Section 2(K) of the ID Act reads as follows:

> *"2(k)"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; "*

Section 17(2) of the Working Journalist Act which reads as follows:

> *"17(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."*

11.The reading of Section 17(2), particularly the phrase *"as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law"*, in my view cannot convert the question into a dispute as defined and understood under Section 2(K) of the I.D. Act. The words, as if the question so referred were a matter referred to the Labour Court for adjudication under the act or law" would only mean that while answering the question the Labour Court would adjudicate it in the same manner as it would adjudicate a reference under the I.D. Act. To say that the reference of the question to the Labour Court changes the character of the reference into an industrial dispute goes against the letter and spirit of

the said provision. The legislature has used the term "refer the question". The legislature has consciously avoided the term 'dispute', because the legislature was aware that the term 'dispute' has its own connotations under the I.D Act. From a reading of the definition of Industrial Dispute under Section 2(k), it is clear that the question that is referred under Section 17(2) cannot be construed as an industrial dispute. An industrial dispute referred to therein is in relation to non employment, the terms of employment or conditions of labour. Whereas the question under Section 17(2) relates to computation of claim and hence, it would not fall under the definition of industrial dispute under the ID Act.

12.As rightly contended by the learned counsel for the respondent Section 17 of the Working Journalist Act is akin to Section 33(C)(2) of the I.D Act. It is well settled by catena of Judgments of this Court as well as Hon'ble Supreme Court that the jurisdiction exercised by the Labour Court under Section 33(C)(2) is that of an Executing Court. In the present case, it is seen that the recommendations of the Majithia Wage Board were accepted by the Government of India on 11.11.2011 and the same was challenged before the Hon'ble Supreme Court, which confirmed the

recommendations of the Majithia Wage Board, but with modification that the same would be effective from 11.11.2011 only.

13.It is the respondents case that the respondent had paid the dues to the petitioner and other employees as per the order of the Hon'ble Supreme Court in 2014-2015 itself, but the petitioner claimed higher Dearness Allowance and therefore petitioned the Government under the Working Journalist Act. The Government in terms of Section 17 of the Working Journalist Act referred the claim petition to the Principal Labour Court. The aforesaid facts clearly establish that the question referred to was a claim relating to the computation of difference in the Dearness Allowance paid by the respondent to the petitioner. In my view, the question referred to the Labour Court on the basis of the Majithia Wage Board recommendations relates to computation of Dearness Allowance under Section 17(2) of the Working Journalist Act and hence not an industrial dispute as defined in the Industrial Disputes Act. I am fortified in my view by the Judgment of the Hon'ble Division Bench of the Gujarat High Court in Keshavlal M.Rao Vs. State of Gujarat and Others reported in 1993 (1) LLN 373. The Hon'ble Chief Justice, S.Nainar Sundaram, J. while

considering similar issue held as follows:

"Section 17 to a very great extent by verbalism and by implications stands in pari materia with Section 33C of the Industrial Disputes Act, 1947. Section 33C(1) of the Industrial Disputes Act, 1947 is comparable with Section 17(1) of the Act; and Section 33C(2) of the Industrial Disputes Act, 1947 is comparable with Section 17(2) of the Act. The scope of Section 33C of the Industrial Disputes Act, 1947 has come up for consideration by pronouncements not only at the level of the High Courts but also at the level of the Apex Court of the land. They are incisive and they have, without any ambiguity characterised the machinery under Section 33C(2) of the Industrial Disputes Act, 1947 as one relatable to execution stage and not at the adjudicatory level over the right to relief claimed by applicant and denied by the opponent. They have held that investigation into and determination of any dispute regarding the applicant's right to relief and the corresponding liability of the opponent will be outside the scope of the said provision. The set of expression found in Section 33C(2) of the Industrial Disputes Act, 1947 is "If any question arises as to the amount of money due", from the employer to the workman. As already noted, the set of expressions used in Section 17(2) of the Act is "If any question arises as to the amount due under this Act to a newspaper employee from his employer". Under Section 33C(2) of the Industrial Disputes Act, 1947, the specified Labour Court decides that question. Under Section 17(2) of the Act, the question gets

referred to the Labour Court for its decision over it. The similar features between the two provisions are very portent and on the basic factor that the provisions are in pari materia, there is every warrant for applying the ratio of the judicial pronouncements delineating the scope of Section 33C(2) of the Industrial Disputes Act, 1947 to delineate the scope of Section 17(2) of the Act."

14.It is trite that Section 33 (1) (a) is attracted only if an industrial dispute is pending. Section 33 of the I.D. Act reads as follows:

[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. – *(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall.-*

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute.

save with the express permission in writing of the authority before which the proceeding is pending."

15.From a reading of Section 33 it is clear that the foundation of Section 33 (1) (a) is the pendency of a dispute under Section 33. On the facts of the case, I have held that what was referred to the Labour Court was an adjudication of a computation petition, hence in my view in the absence of violation of Section 33, the complaint under Section 33 (1) (a) is not maintainable.

16.Here the judgment of the Hon'ble Surpreme Court in the case of *Blue Star Employees' Union Vs. Ex Off. Principal Secy. to Govt. and another* reported in *2000 (8) SCC 94* is relevant and it reads as follows:

> *"4. A complaint can be made to the Tribunal under Section 33-A of the Act if there has been violation or contravention of the provisions of Section 33 of the Act and if it is found that there has, in fact, been such a contravention the Tribunal can proceed to adjudicate the dispute contained in a complaint on its merits. Thus violation or contravention of the provisions of Section 33 of the Act would be the basic question that arises for consideration and before giving any relief to an aggrieved employee under this section, the Tribunal has to find out whether the employer's action falls within one of the following prohibitions contained in Section 33 of the Act."*

17.In the above judgment, the Hon'ble Supreme Court has further held that, if the issue of violation of Section 33 is answered against the employee, nothing further survives for consideration or action by the Tribunal. Therefore, the question of examining the validity of retrenchment does not arise. In any event the said issue is examined for the sake of completion. The Labour Court in my view rightly relied on the Judgments of the Hon'ble Supreme Court in the cases of *The Bhavnagar Municipality vs. Alibhai Karimbhai and others and Silver Cloud Estate Vs. Labour Court and another* reported in *1960 SCC OnLine Mad 356,* for its conclusion that retrenchment does not amount to alteration of conditions of service.

*18.*In the case of *The Bhavnagar Municipality vs. Alibhai Karimbhai and others* it was as follows:

> *"13. Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment*

cannot amount to alteration of the conditions of service."

19.So also in the case of *Silver Cloud Estate Vs. Labour Court and another* reported in *1960 SCC OnLine Mad 356,* it was held that Section 33(2)(a) refers to alteration of conditions of service, retrenchment cannot ordinarily amount to alteration in the conditions of service, but rather termination of the same.

20.To sum up in the present case, it has already been held that there is no dispute pending adjudication, but only a question referred under Section 17(2) of the Working Journalist Act and it is also been seen that the retrenchment does not amount to alteration of service conditions. In both the cases, it is held that Section 33(1)(a) is not attracted. Admittedly no other provisions of Section 33 are shown to be attracted in the present case. Therefore in the absence of contravention of Section 33, the compliant under Section 33(1)(a) necessarily fails. The Award of the Labour Court that there was no violation of Section 33(1)(a) is confirmed.

21.The petitioner is at liberty to seek for reference under Section 10(2)(a) of the Act, and as a fact it is seen that conciliation officer has already submitted its failure report on 17.12.2021.

22.Writ petition is accordingly disposed of. No costs.

15.04.2024
(2/2)

dsn/ns/ah
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation:Yes/No

N.MALA,J.

dsn

To
The Principal Labour Court,
Chennai.

PRE-DELIVERY ORDER IN
W.P.No.6343 of 2022

ORDER DELIVERED ON
15.04.2024
(2/2)