

HIGH COURT OF GUJARAT (D.B.)**JANSATTA EMPLOYEES UNION & 1*****Versus*****TRADERS PVT LTD & 6****Date of Decision:** 16 December 2015**Citation:** 2015 LawSuit(Guj) 2293**Hon'ble Judges:** [Jayant Patel](#), [Vipul M Pancholi](#)**Case Type:** Special Civil Application**Case No:** 11874 of 2014**Subject:** Constitution, Labour and Industrial**Acts Referred:**[Constitution Of India Art 226](#), [Art 12](#)[Industrial Disputes Act, 1947 Sec 25T](#), [Sec 25FFA](#), [Sec 10A](#), [Sec 25U](#), [Sec 2\(b\)](#), [Sec 25FFF](#), [Sec 2\(RA\)](#).[Working Journalists And Other Newspaper Employees \(Conditions Of Service\) And Miscellaneous Provisions Act, 1955 Sec 17](#), [Sec 18](#), [Sec 3](#), [Sec 12](#)**Final Decision:** Petition dismissed**Advocates:** [Amresh N Patel](#), [D M Devnani](#), [Nanavati Associates](#)**Vipul M. Pancholi, J.**

[1] The facts as well as issue involved in all these petitions are similar, therefore, the same are taken up for hearing together. In all these petitions, the principal prayer is that the respective respondent employer be directed to implement the recommendations of Majithia Wage Board, which have been accepted by the Government of India by its notification dated 11.11.2011 and as directed by the Hon'ble Supreme Court of India and thereby the respective respondent employer be directed to make the payment of wages as per the said recommendations.

[2] However, for the sake of convenience, the facts of Special Civil Application No.482 of 2015 are recorded. In Special Civil Application No.482 of 2015, the petitioners have prayed for the following relief/s:

"(i) To direct the Respondent Company to make payment of wages to its employees both working journalists and nonjournalist employees including employees at Annexure-A and B as per the recommendations of Majithia Wage Board and as accepted by the Government of India by its Notification dated 11th November, 2011 and as directed and ordered by the Hon'ble Supreme Court of India vide its judgment dated 7th February, 2014 along with all arrears.

(ii) The Respondents No.4 and 5 be directed to submit their report before this Hon'ble Court with respect to the action taken so far in the matter of implementation of the recommendations of Majithia Wage Board and Government of India Notification and Hon'ble Supreme Court judgment dated 7th February, 2014 in this particular case, and be pleased to further direct them to take all necessary action including criminal prosecution against the company, its responsible officers and Directors of the Company including Respondent No.2 and 3 and get implemented the Majithia Wage Board Award.

This Hon'ble Court be further pleased to direct Respondent 4 and 5 to prosecute Respondent Company and its officials for unfair labour practice committed by them and prosecute them for violation of Section 25-T and U of the Industrial Disputes Act, 1947.

(iii) This Hon'ble Court be pleased to direct the Respondents No.1 to 3 that the benefits of Manisana Wage Board which is required to be given with effect from 1st April, 1998 to all the employees who are in the employment between the period of 1998 to 11th November, 2011 with retrospective effect i.e. from the date of joining of employment during this period and be also direct to pay all arrears accordingly and further direct to grant all the benefits including pay scale, basic pay and all other allowances and fix the wages of all employees and thereafter the benefits of Majithia Wage Board be given on the basis of fixation given of the Manisana Wage Board.

(iv) To hold that the Respondents are guilty of committing contempt of Court and be pleased to punish them appropriately for flagrant, deliberate and willful violation of the mandatory directions of the Hon'ble Supreme Court judgment dated 7th February, 2014 and order dated 13th October, 2014.

(v) During the pendency and/or final disposal of the present petition, this Hon'ble Court be pleased to direct the respondents No.1 to 3 to make the payment to its employees, both journalists and non-journalists including the Employees at Annexure-A and B as per the recommendations of the Majithia Wage Board Award as accepted by the Government of India Notification dated 11th November, 2011

and as directed and ordered by the Hon'ble Supreme Court of India along with due arrears with effect from April, 2014 and onwards as ordered by the Hon'ble Supreme Court of India."

[3] In other petitions also either the individual employees or the trade union have prayed for the similar relief/s.

[4] The case of the petitioners of Special Civil Application No.482 of 2015 in brief is that the respondent company is a company registered under the provisions of the Companies Act and is one of the largest print media company in India. The said company is required to pay the benefits granted by the Majithia Wage Board award. However, the said benefit is not given. It is further the case of the petitioners that after following the procedure laid down in Working Journalist Act and the Rules framed thereunder and after giving an opportunity to all the concerned parties and others, Majithia Wage Board had submitted their recommendations to the Central Government on 31.12.2010 fixing and revising the rates of wages for working journalist and non-journalist newspaper employees. The Government of India issued a notification dated 11th November 2011, whereby the Government accepted the recommendations of the Wage Board in exercise of powers under Section 12 of the Working Journalist Act to enforce the recommendations of the Wage Board. The Government of India accepted the recommendations with some minor alterations. Thus, it is the case of the petitioners that respondent company and other print media companies in different petitions are required to implement the recommendations of Majithia Wage Board and thereby liable to make the payment of wages to its employees both working journalist and non-journalist newspaper employees. However, the said recommendations are not implemented and therefore for different prayers all these petitions are filed.

[5] Heard Mr.Amresh N. Patel, Mr.Prabhakar Upadyay, Mr.Narendra Jain, Mr.P.S.Chaudhary, Mr.H.D.Vasavda and Mr.U.M.Panchal, learned advocates appearing for the petitioners in respective petitions and Mr. S.N.Soparkar, learned Senior Counsel appearing with Mr. Rajesh K. Shah for the respondent company and Mr. D.M.Devnani, learned Assistant Government Pleader for respondent State.

[6] Mr. Amresh N. Patel, learned advocate appearing for the petitioners mainly contended that the respondent company and other print media companies in respective petitions have not implemented the recommendations of Majithia Wage Board, which is accepted by the Government of India by issuing the notification dated 11.11.2011. The concerned management of various newspapers filed petitions before the Hon'ble Apex Court challenging the recommendations of the aforesaid Wage Board and notification dated 11.11.2011 on various grounds. However, the Hon'ble Apex Court has rejected all the petitions filed by the newspaper employers vide its judgment dated 07.02.2014

and thereby the newspaper employers were directed to implement the Wage Board's recommendations and the notification issued by the Government of India. They were also directed to pay the arrears up to March 2014 to all eligible employees in four equal installments within a period of one year from 07.04.2014 and also directed to continue to pay the revised wages from April 2014 onwards. In spite of such direction, the payment is not made and thereby the respondent management has committed the contempt of the order passed by the Hon'ble Apex Court. It is further contended that the petitioners sent a letter to the Additional Chief Secretary, Labour and Employment, for implementing the recommendations made by Majithia Wage Board and for taking action against the officers of the companies for indulging in an unfair labour practice. Complaint is also sent to concerned Police Inspector. The concerned labour authorities informed the petitioner union that necessary action will be taken against the respondent companies. However, no action is taken by the State Authorities and therefore the relief/s prayed for in this petition be granted. Other learned advocates appearing for the petitioners in respective petitions have also adopted the arguments canvassed by learned advocate Mr. Amresh N. Patel appearing for the petitioners in Special Civil Application No.482 of 2015.

[7] On the other hand, Mr. S.N.Soparkar, learned Senior Counsel appearing for the respondent company raised a preliminary objection with regard to the maintainability of the petitions mainly on the following two grounds:

(i) The respondent company is not a 'State' within the meaning of Article 12 of the Constitution of India and therefore the present petitions are not maintainable against the respondent company.

(ii) The petitioners are having efficacious alternative remedy available with them under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as the 'Act of 1955'), hence, this Court may not exercise jurisdiction under Article 226 of the Constitution of India.

[8] Learned counsel would contend that the respondent company is a company registered under the provisions of the Companies Act and a private entity and has not to discharge any public advances so as to become amenable to the writ jurisdiction under Article 226 of the Constitution of India. He would further contend that number of employees have exercised their option to forgo the benefits granted under the recommendations of Majithia Wage Board by filing declarations. Learned counsel referred to Clause 20(j) of the recommendations of the said Wage Board, which provides as under:

"j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scale and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

[9] Thus, the claim of the petitioners and other employees regarding their eligibility under Majithia Wage Board recommendations becomes disputed and hence the said dispute is required to be adjudicated. Learned counsel referred and relied upon the provisions contained under Sections 17 and 18 of the Act of 1955 and submitted that even assuming without admitting that the recommendations of the Wage Board are not implemented as alleged, alternative efficacious remedy is provided under the statute itself and therefore these petitions are not maintainable.

[10] Learned counsel has placed reliance upon the decision rendered by the Hon'ble Apex Court in the case of [M/s. Bennet Coleman & Co. Ltd. v. State of Bihar](#), 2015 AIR(SCW) 3969.

[11] At this stage, he would further submit that whether the declarations are given voluntarily or under the coercion or duress as alleged by the concerned employees cannot be gone into by this Court while exercising the powers under Article 226 of the Constitution of India as the same are disputed questions of fact. He, therefore, requested that these petitions be dismissed only on the ground of non-maintainability of the petitions before this Court.

[12] Mr. Devnani, learned Assistant Government Pleader has mainly contended that as per the Act of 1955, the duty of the State Government is to ensure implementation of payment of wages to the journalists. Learned AGP submitted that the application under Section 17 of the Act of 1955 can be filed before the Secretary, Labour and Employment Department of the State Government. Learned AGP would contend that after receipt of the complaints/grievances from the concerned employees, show cause notice was issued to the respondent management. However, no response was received and therefore the complaints against the respondent company as per the provisions of Section 18 of the Act are filed. The State Government would take appropriate steps as per the provisions of Sections 17 and 18 of the Act of 1955 against the erring establishment/management. He, therefore, contended that these petitioners have the statutory remedy available.

[13] As against the preliminary objection raised by learned counsel appearing for the respondent company about the maintainability of the petitions, learned advocate Mr.

Amresh N. Patel and other learned advocates appearing for the petitioners in respective petitions have submitted that the learned Single Judge of this Court has passed an order on 08.10.2014 in Special Civil Application No.9745 of 2014, wherein the learned Single Judge has observed that the concerned petitioners and the respondent management both are directly connected with the functioning of print media having substantial influence on the opinion of the people at large, and has also direct nexus with the freedom of speech and expression of people at large and therefore the respondent management though not the State or instrumentality thereof, discharges a public duty and positive obligation of a public nature. The learned Single Judge thereby rejected the contention with regard to the maintainability of the petition against the respondent management and admitted the said petition. Thus, the present petition is maintainable.

[14] Mr. Patel, learned advocate appearing for the petitioners further contended that remedy provided under Sections 17 and 18 of the Act of 1955 cannot be said to be an alternative efficacious remedy in the facts and circumstances of the present case and therefore this Court may hear the petitions on merits and exercise the jurisdiction under Article 226 of the Constitution of India.

[15] In support of the aforesaid submissions, learned advocate Mr. Amresh N. Patel has placed reliance upon the decisions of the Hon'ble Apex Court in the case of (1) [Akalakunnam Village Service Cooperative Bank Limited and Another v. Binu N. and others](#), 2014 9 SCC 294 and (2) [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Others v. V.R.Rudani & Others](#), 1989 2 SCC 691 and a decision of this Court in the case of [Miscellaneous Mazdoor Sabha v. State of Gujarat & Ors.](#), 1992 2 GLR 1065.

[16] Having heard the learned counsels appearing for the respective parties and having gone through the various provisions of the Act of 1955, we would first like to consider the question with regard to the maintainability of the present petitions.

[17] Section 3 of the Act of 1955 provides that:

"3. Act 14 of 1947 to apply to working journalists. - (1) The provisions of the Industrial Dispute Act, 1947 (XIV of 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 the Act.

(2) Section 25F of the aforesaid Act, in its application to working journalist, 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."

17.1 Section 17 of the Act of 1955 provides that:

"17. Recovery of money due from an employer.- (1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf or in 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 allocation 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 question so referred were a matter referred to the Labour Court for the 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 subsection(1)."

17.2 Section 18 of the Act of 1955 reads as under:

"18. Penalty.-[(1) If any employer contravenes any of the provisions of this Act or any rule or order made thereunder, he shall be punishable with fine which may extend to two hundred rupees.

(1A) Whoever, having been convicted of any offence under this Act, is again convicted of an offence involving the contravention of the same provision shall be punishable with fine which may extend to five hundred rupees.

(1B) where an offence has been committed by a company, every person who, at the time offence was committed, was in charge of, and was reasonable to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this section, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(1C) Notwithstanding anything contained in sub-section (1B), where an offence under this section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to, any gross negligence on this part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of such offence shall be liable to be proceeded against and punished accordingly.

(1D) for the purposes of this section.

(a) "company" means any body corporate and includes a firm or other association of individuals: and

(b) "director" in relation to a firm means a partner in the firm,]

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this section.

(3) No court shall take cognizance of an offence under this section, unless the complaint thereof was made within six months of the date on which the offence is alleged to have been committed."

[18] From the aforesaid provisions of the Act of 1955 it is clear that inbuilt mechanism is provided under the Act for redressal of the grievance of the newspaper employees. If the amount due under the Act is not paid by the employer, the newspaper employee himself or any authorized person on his behalf can file an application before the State Government without prejudice to any other mode of recovery, for the recovery of the amount due to him. The State Government or any other officer specified in this behalf by the State Government, if he is satisfied that any amount is due, is required to issue a certificate for that amount to the Collector and the Collector is to recover that amount in the same manner as an arrear of land revenue. It is further clear that if any

dispute arose with regard to any amount due under the Act to a newspaper employee from his employer, the State Government can refer the question to any Labour Court constituted under the Industrial Disputes Act of 1947 or any other law relating to the investigation and settlement of the industrial disputes in force in the State for adjudication of the dispute. The Labour Court, thereafter, is required to forward its decision to the State Government which has made the reference and any amount found due by the Labour Court can be recovered by the Collector as arrears of land revenue. It is further clear that if the provisions of the Act are violated, penalty can be imposed under Section 18 of the Act.

[19] The Hon'ble Apex Court in the case of M/s. Bennet Coleman & Co. Ltd. held in para 18 as under:

"18. Having regard to the scheme of the Working Journalists Act and having regard to the provisions of the I.D.Act, as incorporated by Section 3 of the Working Journalists Act, prosecution for unfair labour practice is maintainable only under Section 25U. Section 25U provides for penalty for committing unfair labour practice and Section 29 provides for penalty for breach of settlement or award. Section 2(ra) of the I.D.Act defines unfair labour practice. Settlement is defined under Section 2(p) to be a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and the workmen otherwise than in the course of conciliation proceedings. The recommendations of the Wage Board is thus neither an award nor a settlement in terms of the provisions under the I.D.Act. It is not passed by the Labour Court or Industrial Tribunal or National Industrial Tribunal and it is not an Arbitration Award in terms of Section 10A of the I.D.Act. It is not a settlement in terms of Section 2(b) of the I.D.Act. It is not an agreement between the parties. Its enforceability, being a recommendation, depends on the order passed by the Central Government. The Central Government has passed that order by issuing Annexure P1 notification. If the same is not complied with, as we have already referred to above, the remedies lie under Section 17 for recovery or under Section 18 for penalty and not under the provisions of the I.D. Act."

[20] In the present group of petitions, as per respondent employer, number of employees have given declaration before the respondent management and thereby exercised their option to forgo the benefits granted under the recommendations of Majithia Wage Board. The respective respondent management in each of the petitions is disputing its liability to make the payment as per the recommendations of Majithia Wage Board relying upon Clause 20(j). Thus, the question as to whether the said declaration given by the concerned employee is obtained by way of coercion or the same is voluntary, cannot be decided in the petition filed under Article 226 of the

Constitution of India. The adjudication of such disputed questions of facts can be conveniently made under statutory remedy available. The aforesaid aspect did not expressly come for consideration before the learned Single Judge of this Court while passing interim order dated 08.10.2014 in Special Civil Application No.9745 of 2014.

[21] The decision in the case of Miscellaneous Mazdoor Sabha relied upon by the learned advocate appearing for the petitioners would not be helpful to the petitioners. In the said case the entire labour force was rendered jobless without following provisions of Section 25FFA and 25FFF of Industrial Disputes Act and therefore in the facts and circumstances of the said case, the Division Bench of this Court held that there is failure on the part of the company to discharge public duty and therefore writ jurisdiction under Article 226 must be exercised by the Court. The facts of the present case are different as discussed in this order and therefore the said decision is not applicable. The other decisions upon which reliance is placed by the learned counsel for petitioner is ill-founded because the question of adjudication of disputed questions of facts through the mechanism provided under statutory remedy therefore whether petition under Article 226 of the Constitution should be entertained or not did not come up for consideration.

[22] In the case of [Union of India & Others v. Major General Shrikant Sharma & Another](#), 2015 6 SCC 773, the Hon'ble Supreme Court, after considering its various earlier decisions, observed and held in para 36 as under:

"36. The aforesaid decisions rendered by this Court can be summarised as follows:

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India.(Refer: L. Chandra Kumar and S.N. Mukherjee.)

(ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act. (Refer: Mafatlal Industries Ltd.)

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation (Refer: Nivedita Sharma)

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma)."

[23] Thus, keeping in mind the guidelines issued by the Hon'ble Apex Court, facts of the present case are required to be considered. As per the case of the respondent company, number of employees have exercised their option to forgo the benefits granted under the recommendations of Majithia Wage Board by filing declarations. Thus, the respondent company is disputing its liability to make the payment as per the recommendations of Majithia Wage Board in view of Clause 20(j).

Learned advocates appearing for the petitioners contended that the said declarations were not given voluntarily and they were obtained under duress. However, we are of the opinion that such dispute deserves adjudication before the competent authority/Court as per Section 17 of the Act of 1955. This Court, while exercising powers under Article 226 of the Constitution of India, cannot go into such disputed question of fact. Thus, we are of the considered opinion that when a statutory forum is created by statute/law for redressal of grievance, a writ petition may not be entertained further, when an efficacious statutory remedy is available to the aggrieved person. Rather the statute itself contains a mechanism for redressal of grievance. Hence, we are not inclined to entertain these petitions filed under Article 226 of the Constitution of India. Accordingly, all these petitions are liable to be dismissed only on this ground. Thus, when all these petitions are dismissed only on the ground of non-maintainability of the petitions as the efficacious alternative statutory remedy is available with the petitioners, the other contentions and the decisions relied upon by the learned advocates appearing for the petitioners are not dealt with. However, it is clarified that as and when the complaints/applications are received from the concerned newspaper employees by the State Government, the State Government shall consider and decide the same in accordance with law keeping in mind Sections 17 and 18 of the Act of 1955 and at that stage rights and contentions of newspaper employees and employer shall remain open.

[24] In view of the above, all these petitions are dismissed. Notice discharged. In the facts of the case, no order as to cost.