Before S.S. Nijjar, J

THE HIND SAMACHAR LTD.—*Petitioner*

versus

RAJINDER KUMAR GUPTA & OTHERS—*Respondents*

C.W.P. NO. 2412 OF 2001

13th September, 2001

Constitution of India, 1950—Art. 226—Working Journalists and O.N.P. Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955—Ss. 2(c), 2(f), 2(eee) & 17—Report of the Wage Boards for Working Journalists & non-Journalists Newspaper Employees—S.17.2—Appointment of an Advocate as a part time correspondent on a retainership fee—Termination of services after about 7 years—Bachawat Wage Board recommending regular pay scale for Journalists and non-Journalists—Claim to arrears of wages—Rejection of—Dispute referred to Labour Court—Whether a part time correspondent falls within the definition of a 'Newspaper employee" or a 'working journalist"—S.2(f) defines that a person can have a principal avocation of a journalist even whilst working on a part time basis and a 'Newspaper employee' as defined in S.2(c) also includes any other person employed to do any work in, or in relation to, any newspaper establishment—Labour Court finding that respondent satisfies all the conditions for being termed as a 'newspaper employee' or a 'working journalist'—Term 'Retainer' also falls within the meaning of wages as defined in S.2(eee)—No illegality in the Award holding the respondent entitled to the amount of arrears—Writ liable to be dismissed—Findings of fact based on appreciation of evidence—Award does not suffer from an error of law apparent on the face of the record—High Court has no jurisdiction to reappreciate the evidence.

Held, that a bare perusal of Section 2(c) of the Working Journalists and O.N.P. Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 clearly shows that the term "newspaper employee" is not synonymous with the term "working journalist" as given in Section 2(f), but also includes any other person employed to do any work in, or in relation to, any newspaper establishment. By no stretch of imagination can it be held that

respondent No. 2 while sending legal news on a daily basis to the petitioner, was not performing any work in relation to the newspaper. Therefore, the Labour Court has rightly held that the work done by respondent No. 1 falls within the definition of "newspaper employee". While giving the aforesaid finding, the Labour Court has taken note of numerous documents produced by respondent No. 1. Similarly, a bare perusal of S.2(f) shows that a person can have a principal avocation of a journalist even whilst working on a part time basis in relation to a newspaper establishment. It is not restricted to mean a person whose full time principal avocation is that of a journalist. The Labour Court after appreciating the evidence led by the parties has come to the conclusion that respondent No. 1 satisfies all the conditions for being termed as a "newspaper employee" or a "working journalists".

(Para 13)

Further held, that a perusal of S.2(eee) shows that wages include all remunerations capable of being expressed in terms of money. It includes such allowances on which a money value can be placed. It even includes value of house accommodation and other fringe benefits. Therefore, the term "retainer" would fall within the meaning of "wages" as given in Section 2(eee). That being so, respondent No. 1 would clearly fall within the term "newspaper employee" or "working journalist". Therefore, the findings recorded by the Labour Court cannot be faulted either on law or on facts.

(Para 17)

Further held, that the findings have been arrived at by due application of mind to the evidence led by the parties both oral as well as documentary. It is not the function of the High Court while exercising jurisdiction under Articles 226/227 of the Constitution of India to reappreciate the evidence as could be done by a court of appeal. Under Articles 226/227 of the Constitution of India, the High Court exercises a supervisory jurisdiction. This jurisdiction can be exercised for correcting an error apparent on the face of the record. It cannot be exercised for recording a different finding, even if one is possible, on the evidence adduced before the Labour Court. The High Court can only interfere if the finding is perverse which would lead to the conclusion that the award suffers from an error apparent on the face of the record. So long as there is some evidence on the record, on the

basis of which, the Labour Court could have recorded the finding, the High Court will not upset the same on the ground that the evidence was not sufficient.

(Para 18)

Sanjeev Sharma, Advocate *for the Petitioner*

R.L. Gupta, Advocate *for respondent No. 1*

JUDGMENT

S.S. NIJJAR, J,

(1) This writ petition under Articles 226/227 of the Constitution of India seeks issuance of a writ in the nature of Certiorari quashing the award dated 11th September, 2000 passed by the Presiding Officer Industrial Tribunal-cum-Labour Court, U.T. Chandigarh (hereinafter referred to as the Labour Court).

(2) The petitioner, the Hind Samachar Limited, publishes newspapers from various places including the State of Punjab, Ambala and Delhi. The petitioner has been categorised as Group III newspaper establishment in the Report of the Wage Boards for Working Journalists and Non-journalist Newspaper Employees (hereinafter referred to as "the Bachawat Wage Board") for working journalists and non-journalists employees. The Bachawat Wage Board has recommended the pay scale of Rs. 2485—115—3060—130—3710—145—4435—160—5235. Under Section 17.2 of the Award, it has been provided that a part-time correspondent shall be paid not less than 1/3 of the basic pay of full time correspondent in addition to payment on column basis.

(3) Respondent No. 1 Rajinder Kumar Gupta was enrolled as an Advocate in the year 1974. In his application for enrolment, he had given the particulars of working as a Journalist. He was given permission by the Bar Council of Punjab and Haryana for working as a journalist. Prior to his enrolment as an advocate, he was working as a Press Reporter of a newspaper known as Daily Pradeep, published from Jalandhar. On 25th May, 1987, respondent No. 1 made an application to the petitioner for appointment as a legal correspondent. In the application he had stated his qualification to be MA, and LL.B. It is also stated that he is practising as a lawyer at the High Court

for the last 13 years. He further stated that he has worked as a legal correspondent of the Indian Express from the years 1977—85. It is further stated that since 1985, he is working in the same capacity for the Tribunal Chandigarh. He further stated that he had already worked for the petitioner as a legal correspondent for more than 5 years. This application was accepted by the petitioner. By order dated 2nd June, 1987, respondent No. 1 was appointed as a part-time legal correspondent on the terms and conditions mentioned in the letter of appointment. These were as follows :—

> "We are in receipt of your application dated 25th May, 1987 regarding the appointment as a part time Legal Correspondent at Chandigarh.
>
> We hereby appoint you as our Part Time Legal Correspondent at Chandigarh with effect from 1st June, 1987 for the coverage of High Court News-items as per following terms and conditions :—
>
> 1. That you shall be covering the High Court news items daily.
> 2. That all the news items sent by you will be for all the newspapers of our Group.
> 3. That you will be paid a sum of Rs. 350 (Rupees Three Hundred Fifty Only) per month as retainership with effect from 1st June, 1987.
> 4. That no other allowance or expenses whatsoever will be paid to you except your retainership allowance of Rs. 350 per month.
>
> In case the above terms are acceptable to you, please return us the duplicate copy of this letter duly signed by you in token of your acceptance, for our records."

(4) Respondent No. 1 worked with the petitioner as Part Time Legal Correspondent till 15th October, 1994 when his services were terminated with the following observations :—

> "Please note that it has been decided to terminate the arrangement of legal consultancy with effect from 15th October, 1994. Therefore, henceforth you are no longer retainer with us."

(5) In response to the aforesaid letter dated 15th October, 1994, respondent No. 1 sent a legal notice dated nil in the month of November, 1994. In this notice, he claimed that his services had been illegally terminated. He further stated that at the time of his appointment, the remuneration was fixed at Rs. 350/- with promise to suitably revise the same alongwith other employees. His pay was raised to Rs. 400 soon after the appointment. He continued to represent for refixation in the light of recommendation of Bachawat Wage Board on pay scale for Journalists and non-journalists. It is stated that "Now that the Supreme Court has finally rejected the plea of the Newspaper Managements against the award, you are required to pay me arrears of wages in the light of the award from the year 1988 onwards as per the specific recommendation of Bachawat Panel in regard to the part time correspondents." Number of other issues have been raised in the legal notice which are not relevant for the decision of the present writ petition. It is further stated that the representations made by the respondent No. 1 were ignored. His services were terminated in order to prevent respondent No. 1 from pressing his claim for payment.

(6) Petitioner gave a reply to the notice on 12th December, 1994 and denied the claim. It was stated that the words Services : Pay : employee : pay scale ; wages etc. are irrelevant as the arrangement with respondent No. 1 was that of retainership and not of Master and Servant. It was further stated that respondent No. 1 was being paid Retainership and not wages and salary. It was further stated that being a practising lawyer, respondent No. 1 could not become an employee of any organisation. Not satisfied with the reply to the legal notice, respondent No. 1 made an application under Section 17 of the Working Journalists and O.N.P. Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as "the Working Journalists Act") to the Home Secretary, Chandigarh Administration exercising the powers of the State Government under the Working Journalists Act for issuance of a certificate for realisation of the amount of Rs. 2,38,574.86 p. to Collector, Jalandhar on account of money due. The claim put forward by respondent No. 1 was denied by the petitioner. It was stated that the application was not maintainable as the dispute could only be resolved by way of a reference under Section 17(2) of the Working Journalists Act, read with rule 10 and 13 of the Industrial Disputes Rules. Consequently, the dispute was referred to the Labour Court on a reference made by

the Chandigarh Administration,—*vide* No. 2030-H (IV)-95/16840 dated 7th September, 1995.

(7) Respondent No. 1 reiterated his claim before the Labour Court. The petitioner also reiterated its earlier stand. On 17th June, 1996, the Labour Court framed the following issues :—

"1. Whether the applicant is entitled to the amount claimed in para 11, of the application ? OPW.

2. Whether the applicant is not a working journalist under the working journalist and other \ newspapers employee (Condition of Service) and Misc. Provision Act, 1955 ? OPR.

3. Relief."

(8) Parties were permitted to lead oral as well as documentary evidence in support of their respective claims. After taking into consideration, the entire evidence and the legal submissions, the Labour Court has given the award dated 11th September, 2000 which is challenged in the present writ petition.

(9) It is submitted by Mr. Sharma learned counsel appearing for the petitioner that respondent No. 1 was paid a sum of Rs. 5472 as full and final payment of arrears of Retainer fee for the period 1st January, 1988 to 31st December, 1989. It is submitted that respondent No. 1 does not fall within the definition of "working journalists" as given in Section 2(f) of the Working Journalists Act nor does he fall within the definition of "newspaper employees" as given under Section 2(c). The principal avocation of respondent is that of an Advocate. It is submitted that respondent No. 1 being an enrolled Advocate with the Punjab and Haryana Bar Council was subject to the Bar Council of India Rules, 1975. These rules place restrictions on Advocates accepting paid employment by the Advocates. Under rule 49, it is provided that an Advocate shall not be a full time salaried employee of any government firm, corporation or concern. On taking up such employment, the Advocate has to intimate the fact to the Bar Council and shall, thereupon, cease to practise as an Advocate so long as he continues in such employment. Rules 51 and 52 permit part time employment subject to the approval of the Bar Council with which the Advocate is enrolled. Respondent No. 1 has not been given permission

to work. Only a certificate has been given that at the time of enrolment, respondent No. 1 was working as Press Reporter with daily Pradeep Jalandhar. Learned counsel has further submitted that although ESI and Provident Fund Contributions were paid in relation to respondent No. 1, but the payment had been made on the oral request made by him. It is also submitted that respondent No. 1 had voluntarily accepted retainership fee of Rs. 350. Even at that time the payment was contrary to the Palekar Award. Had respondent No. 1 been an employee of the petitioner, he could not have been paid contrary to the Palekar award. It is further submitted that respondent No. 1 having misrepresented to the petitioner, at the time of appointment as Part Time Legal Correspondent, cannot be permitted to take advantage of the same.

(10) Mr. R.L. Gupta, appearing for the respondent No. 1 in reply submitted that respondent No. 1 falls within the definition of "Newspapers Employees" as given in Section 2(c) of the Act. For the purposes of being a newspaper employee, it was not necessary that the principal avocation of respondent No. 1 was that of a Journalist. That condition would be necessary only if the claim of the respondent No. 1 was based on being a working journalist. He further submitted that even under Section 2(F) of the working Journalists Act, the definition of "Working Journalists" would include a person like respondent no. 1. He has been working on part-time basis sending legal news to the petitioner on a daily basis. Therefore, it cannot be said that respondent no. 1 does not fall within the definition of working Journalists. Mr. Gupta has submitted that all ingredients of Section 2(c) and (f) have been proved by respondent no. 1 by giving oral as well as documentary evidence. Respondent no. 1 has devoted more time to the avocation of journalism than to the practice of law as an Advocate. His income from journalism is more than his income from advocacy. He has been a journalist since the year 1965 and was, therefore, not a new entrant as a journalist when he joined the petitioner as a part-time legal correspondent. It is further submitted that respondent no. 1 was paid the remuneration in accordance with the Bachawat Award by the Tribune newspaper. It is further submitted that respondent was under the supervision and control of the petitioner. Therefore, respondent No. 1 was entitled to the relief which has been granted by the Labour Court.

(11) I have considered the submissions put forward by the learned counsel for the parties.

(12) The Labour Court, after appreciating the evidence led by the parties, has held that the claim of respondent no. 1 is fully covered under Section 2(f) of the working Journalists Act. It has also been held that respondent no. 1 has got the permission from the bar Council for working as a Journalist. The argument with regard to the Palekar Award has also been rejected on the ground that the workman has stated that he was orally assured by Mr. Sanghi that the payment will be paid according to the Bachawat Award, after the report. The Labour Court has also rejected the preliminary objection raised by the petitioner to the effect that respondent No. 1 has no pre-existing right to receive the wages as claimed, and therefore, the application being in the nature of an application under Section 33(c) (2) of the Industrial Disputes Act was not maintainable. It has been held that the application has been moved under Section 17 of the Working Journalists Act. The application is not merely an application for the issuance of a certificate or claiming the amount due. It is also a reference which has been sent by the appropriate Government for determining whether Shri Rajinder Kumar Gupta is entitled to receive the amount from the management as per his claim in application dated 29th January, 1995. The details worked out by the respondent No. 1 in the application with regard to the amount due have not been denied by the petitioner. A perusal of the award shows that the Labour Court has based its findings on oral as well as documentary evidence. The terms "Newspaper Employee and Working Journalist" are defined in Section 2 (c) and 2(f) of the working Journalists Act respectively. These may be reproduced as follows :—

"2 ....

(c) "newspaper employee" means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment ;

(f) " working journalist" means a person whose principal avocation is that of a journalist and (who is employed as such, either whole-time or part time, in, or in relation to, one or more newspaper establishments), and includes an editor, a reader-writer, news editor,

sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news photographer and proof-reader, but does not include any such person who —

(i) is employed mainly in a managerial or administrative capacity, or

(ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature "

(13) A bare perusal of Section 2(c) clearly shows that the term "newspaper employee" is not synonymous with the term "working journalist" as given in Section 2(f), but also includes any other person employed to do any work in, or in relation to, any newspaper establishment. By no stretch of imagination can it be held that respondent No. 2 while sending legal news on a daily basis to the petitioner, was not performing any work in relation to the newspaper. Therefore, the Labour Court has rightly held that the work done by respondent No. 1 falls within the definition of "newspaper employee" while giving the aforesaid finding, the Labour Court has taken note of numerous documents produced by respondent No. 1. Similarly, a bare perusal of Section 2(f) shows that a person can have a principal avocation of a journalist even whilst working on a part-time basis in relation to a newspaper establishment. It is not restricted to mean a person whose full time principal avocation is that of a journalist. The definitions in 2(c) and 2(f) are very wide and have been restricted only by Clause (f) (i) and (ii). Under these clauses, a person may not be a working journalist who is employed mainly on a managerial or administrative capacity or a person employed in a supervisory capacity functioning mainly in a managerial capacity. Respondent No. 1 does not fall under any of these exclusionary Clauses contained in Clause (i) and (ii). The Labour Court after appreciating the evidence led by the parties has come to the conclusion that respondent No. 1 satisfies all the conditions for being termed as a "newspaper employee" or a "working journalist". It has come in evidence that the earnings of the respondent No. 1 as a journalist are in excess of his earnings as an Advocate. It has also come in evidence that respondent No. 1 has been sending newspaper reports on a daily basis. It has also come in

evidence that respondent No. 1 has been spending much more time on journalism than on practice of law as an Advocate. Therefore, the Labour Court has rightly come to the conclusion that principal avocation of respondent No. 1 is that of a journalist. The Labour Court has rightly rejected the argument of the petitioner that respondent No. 1 could not have been treated as an employee as he had not been granted permission by the Bar Council of Punjab and Haryana. The application of respondent No. 1 for enrolment as an Advocate has been placed on record of the Labour Court. It is to be found at pages 99 to 103 of the record. In this application, against column No. 11, respondent No. 1 has mentioned that he is "working as a Press Reporter" with daily Pradeep Jalandhar i.e. engaged in journalism. See my undertaking at page 3". Column 11 of the form is as under :—

> "Whether or not the applicant is engaged or has ever been engaged in any trade or business ; if so, the nature of such trade or business and the place where it is or was carried on."

(14) At the end of the form is the undertaking in the following terms:—

> "In connection with my application for enrolment as an Advocate, I undertake that after my enrolment as an Advocate, the work of journalism and reporting mentioned in item No. 11 on page 1 of this application will not interfere with my professional duties and I shall not advertise myself at all as an Advocate in my reports.
>
> Sd/—Rajinder Kumar 24th July, 1974."

(15) Exhibit W13 is a certificate issued by the Bar Council of Punjab and Haryana noticing that when respondent No. 1 was enrolled as an Advocate, he was working as Press Reporter with Daily Pradeep, Jalandhar. The Labour Court has rightly come to the conclusion that it has not been shown by any cogent evidence by the petitioner that respondent No. 1 was working as a whole time Advocate. The Labour Court has further held that simply because respondent No. 1 has got the licence of an Advocate will not be sufficient to hold that his

principal avocation was that of an Advocate and not that of Journalist. The Labour Court has also held the claim of respondent No. 1 to be established on the basis of letters issued by the petitioner with regard to the deduction of Provident Fund and ESI. These exhibits show the admission of respondent No. 1 as a member of Employees Provident Fund Scheme, 1952. The other exhibits are with regard to the entires made in the pass-book issued by the Provident Fund Authorities. Respondent No. 1 has placed on record of the Labour Court the documents issued by the Regional Provident Fund Commissioner indicating the amounts spent by the employer as also the employee. Exhibit W4 shows the identity card issued to respondent No. 1 by the ESI Corporation. Thereafter, there are numerous documents showing payment of bonus to respondent No. 1. The Labour Court has relied on all the aforesaid documents to reject the argument of the petitioner that respondent No. 1 was not in receipt of wages as he was paid fixed retainership of Rs. 350 initially and Rs. 400 thereafter. This finding of the Labour Court based on appreciation of evidence also has to be upheld.

(16) The argument of the petitioner that respondent No. 1 cannot be said to be an employee because he was being paid only a retainership is even otherwise wholly untenable. Section 2(eee) of the Working Journalists Act defines wages which is as follows :—

> "2..... ....
>
> (eee) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a newspaper employee in respect of his, employment or of work done in such employment, and includes :—
>
> (i) such allowances (including dearness allowance) as the newspaper employee is for the time being entitled to :—
>
> (ii) the value of the house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles :—

(iii) any travelling concession, but does not include :—

(a) any bonus :

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the newspaper employee under any law for the time being in force :

(c) any gratuity payable on the termination of his service.

Explanation :—In this clause, the term "wages" shall also include new allowances, if any, of any description fixed from time to time)."

(17) A perusal of this provision shows that wages include all remunerations capable of being expressed in terms of money. It includes such allowances on which a money value can be placed. It even includes value of house accommodation and other fringe benefits. Therefore, the term "retainer" would fall within the meaning of "wages" as given in Section 2(eee). That being so, respondent No. 1 would clearly fall within the term "newspaper employee" or "working journalist". From the aforesaid discussion, it becomes clear that the findings recorded by the Labour Court cannot be faulted either on law or on facts.

(18) These findings have been arrived at by due application of mind to the evidence led by the parties both oral as well as documentary. It is not the function of this Court while exercising jurisdiction under Articles 226/227 of the Constitution of India to reappreciate the evidence as could be done by a court of appeal Under Article 226/227 of the Constitution of India, this Court exercises a supervisory jurisdiction. This jurisdiction can be exercised for correcting an error apparent on the face of the record. It cannot be exercised for recording a different finding, even if one is possible, on the evidence adduced before the Labour Court. This Court can only interfere if the finding is perverse which would lead to the conclusion that the award suffers from an errot apparent on the face of the record. So long as there is some evidence on the record, on the basis of which, the Labour Court could have recorded the finding, this Court will not upset the same on the ground that the evidence was not sufficient. I am fortified

in this view of mine by a judgment of the Supreme Court in the case of *Syed Yakoob* versus *K.S. Radhakrishnan and others (1).* In the aforesaid case it has been held as under :—

> "The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened of questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be recorded as an error of law which can be corrected by a writ of certiorari."
>
> A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court. (s) AIR 1955 SC 233 and AIR 1958 SC 398 and AIR 1960 SC 1168, Rel. on."

(19) The findings of fact recorded in this case are based on appreciation of evidence which has been led by the parties. I find that the petitioner has failed to point out any error apparent on the fact of the award.

(20) There is no merit in this writ petition and the same is hereby dismissed. No costs. Let the payment be made to the respondent No. 1 within two months from today.

R.N.R

(1) AIR 1994 SC 477

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