

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.11145 and 11326 of 2002

Between:

Ushodaya Publications,
Eenadu Complex, Somajiguda,
Hyderabad, Represented by its
M.D. Mr.Ch.Kiron

.. Petitioner

Vs.

The Authority under Sec.17(1)
of the Working Journalists &
Other News Paper Employees
(Conditions of service) and
Miscellaneous Provisions Act,
1955 & Deputy Commissioner
of Labour, Hyderabad (Twin
Cities) Anjaiah Karmika
Samshema Bhavan RTC 'X'
Roads, Hyd – 20 and another.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **10.07.2023**

- | | |
|---|-----|
| 1. Whether Reporters of Local newspapers
may be allowed to see the judgment? | No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes |
| 3. Whether his Lordship wish to
see the fair copy of the judgment? | Yes |

J. SREENIVAS RAO, J

*** THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**
+ WRIT PETITION No.11145 and 11326 of 2002

% DATED 10th July, 2023

Ushodaya Publications,
Eenadu Complex, Somajiguda,
Hyderabad, Represented
by its M.D. Mr.Ch.Kiron

.. Petitioner

Vs.

The Authority under Sec.17(1)
of the Working Journalists &
Other News Paper Employees
(Conditions of service) and
Miscellaneous Provisions Act,
1955 & Deputy Commissioner
of Labour, Hyderabad (Twin
Cities) Anjaiah Karmika
Samshema Bhavan RTC 'X'
Roads, Hyd – 20 and another.

.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : G.V.S.Ganesh

^Counsel for Respondents : Sri Srinivasa Sarma and Learned
Assistant Government Pleader for
respondent No.1

? CASES REFERRED:

1. AIR 1979 SC 1981

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.11145 and 11326 of 2002****ORDER:(ORAL)**

These writ petitions are filed seeking following reliefs:

W.P.No.11145 of 2002

“to issue a writ order or direction more in the nature of a writ of prohibition:

- (i) Restraining the 1st respondent herein from proceeding further in pursuance of order dt.10-5-2002 passed in W.J.No.6 of 2001
- (ii) (ii) Declaring that a 1st respondent does not have any jurisdiction to entertain and/or proceed with the consideration of W.J.No.6/2001 as being totally outside the purview of the working Journalist Act.

W.P.No.11326 of 2002

to issue a writ order or direction more in the nature of a writ of prohibition:

- (iii) Restraining the 1st respondent herein from proceeding further in pursuance of order dt.10-5-2002 passed in W.J.No.7 of 2001

- (iv) (ii) Declaring that a 1st respondent does not have any jurisdiction to entertain and/or proceed with the consideration of W.J.No.7/2001 as being totally outside the purview of the working Journalist Act.

2. Heard Sri G.V.S.Ganesh, learned Counsel for the petitioner and Sri Srinivasa Sarma, learned counsel for respondent No.2, learned Assistant Government Pleader for respondent No.1.

Brief facts of the case:

3. Respondent No.2 in both the writ petitions have filed applications before respondent No.1 authority invoking the provisions of working Journalist Act, 1955 claiming gratuity from the petitioner. In the said application they stated that they were employed as Compositor-II Trainee on 17.11.1975 in the petitioner office and their services were confirmed *vide* letter dated 28.12.1976 w.e.f. 01.11.1976, and their services were suspended by the petitioner on 21.07.1977 on certain charges. Eenadu Press Workers Union approached the Hon'ble Apex Court and filed Civil Appeal No.2662 of 1979 and the same was disposed *vide* order dated 07.02.1996 directing the petitioner to revoke the suspension order and ordered to take the 25 workmen(including the respondent No.2 in both the cases) into

service and with a further direction to pay the wages to the workmen who were not employed during suspension and 50% backwages to the workmen who have been gainfully employed and directed the commissioner of Labour to decide the compensation payable to the workmen, in accordance with the order.

4. Pursuant to the orders of Hon'ble Apex dated 07.02.1996, the petitioner has issued letter on 04.03.1996 revoking the suspension order and directed respondent No.2 in the both the cases to report for duty on or before 15.03.1996. Subsequently, on 07.05.1996 respondents have submitted their resignation. Pursuant to the orders of Labour Commissioner, petitioner herein paid a sum of Rs.1,29,363.95/- towards backwages to respondent No.2 in both the cases. In the above said applications, the petitioner herein has filed counter contending that applications filed by respondents are not maintainable under law and they ought to have filed the applications under the provisions of Payment of Gratuity Act, 1972 and also denied the claim of the unofficial respondents. Respondent No.1 authority clubbed both the applications and passed common order dated 10.05.2002 holding that the applications filed by the unofficial respondents under Section

17(1) of the Act is maintainable. Aggrieved by the same, the petitioner filed the present writ petitions.

5. Learned counsel for the petitioner vehemently contended that the respondent No.1 authority, having accepted the contentions of the petitioner that the provisions of Section 5 of the Act is not applicable, in view of the availability of remedy as provided under Section 5 of Payment of Gratuity Act, 1972('Act, 1972' for brevity), ought not to have held that the claim of the unofficial respondents under Section 17(1) of 1955 Act is maintainable and the impugned order passed by respondent No.1 is contrary to the law. In support of his contention he relied upon the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. The Labour Court, Jullundur and others***¹.

6. *Per contra*, learned counsel appearing for respondents submits that whether the unofficial respondents are entitled to the relief claimed under applications for payment of Gratuity or not has to be decided by respondent No.1 authority after adducing the evidence. The writ petition filed by the petitioner is premature one and not maintainable under law. The unofficial respondents have filed applications before State Controlling Authority under P.G. Act *vide* Case No.84 of 1997

¹ AIR 1979 SC 1981

and 9/97, instead of approaching Central authority as the petitioner establishment comes within the purview of the Central authority and the said applications were dismissed on the ground of jurisdiction on 15.12.2000.

7. Having considered the rival submissions made by respective parties and upon perusal of the records, it clearly reveals that unofficial respondents have filed application before respondent No.1 authority invoking provisions of Section 5 and 17(1) and 17(2) of the Act XLV of 1955 claiming an amount of Rs.50,000/- towards gratuity.

8. The specific contention of the petitioner is that the respondent No.1 authority is not having jurisdiction to entertain the claim of the unofficial respondents and the provisions of the Act, 1955 is not applicable in view of the availability of remedy under the provisions of the Act, 1972 and the impugned order passed by respondent No.1 is without jurisdiction.

9. In ***State of Punjab v. Labour Court(supra)***, Hon'ble Apex Court held that:

7. It is apparent that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right of payment of gratuity, indicates when the right will

accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfillment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an Appellate Authority particularly constituted under the Act.

8. Upon all these considerations, the conclusion is inescapable that Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other. That being so, it must be held that the applications filed by the employee respondents under Section 33-C(2) of the Industrial Disputes Act did not lie, and the Labour Court had no jurisdiction to entertain and dispose of them. On that ground, this appeal must succeed.

10. In the above judgment the Hon'ble Apex Court specifically held that the payment of gratuity due must be taken under the provisions of the Act, 1972 only and not under any other enactment. In the case on hand, the unofficial respondents have made a claim for payment of gratuity before respondent No.1 invoking the provisions of Act, 1955 instead of filing applications under the provisions of Act, 1972 before Central Authority. The principles laid down in the above said judgment are squarely applicable to the case on hand.

11. As per the law laid down by the Hon'ble Apex Court, the applications filed by unofficial respondents before respondent No.1 authority for payment of Gratuity invoking the provisions of the Act, 1955 are not maintainable under law and the impugned common order dated 10.05.2002 is liable to be set aside and accordingly set aside.

12. The learned counsel for the respondents made a request to the Court that the liberty may be granted to the unofficial respondents to file applications under the provisions of the Act, 1972 before the concerned authority(central) by granting reasonable time, on the ground that the respondents have prosecuted the proceedings before respondent No.1 authority bonafidely and they are class-IV employees. Admittedly, the impugned order passed by respondent No.1 is in favour of them and this Court while admitting the W.P.No.11326 of 2002 granted interim suspension on 26.06.2002 in W.P.M.P.No.13943 of 2002 and the said interim order is continuing till date. In view of the peculiar facts and circumstances of the case, to render substantial justice to the parties invoking extraordinary jurisdiction of this Court under Article 226 of Constitution of India, the unofficial respondents are granted liberty to file appropriate applications before the central authority, invoking the provisions of Act 1972, within a

period of four(4) weeks from the date of receipt of a copy of this order and the central authority may consider the said applications on merits and pass appropriate orders, in accordance with law, after giving opportunity to the parties concerned.

13. With the above said directions, both the writ petitions are disposed of. No order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

J. SREENIVAS RAO, J

10th July, 2023

PSW

418

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION Nos.11145 and 11326 of 2002

10th July, 2023
PSW