# THE HIGH COURT OF MADHYA PRADESH: PRINCIPAL SEAT AT JABALPUR

## (DIVISION BENCH)

**RP-1077-2019**

**Rajasthan Patrika Pvt. Ltd.** …….. Petitioner

Vs.

**State of Madhya Pradesh and others** …… Respondents

**AND**

**RP-1076-2019**

**Rajasthan Patrika Pvt. Ltd.** …….. Petitioner

Vs.

**State of Madhya Pradesh and others** …… Respondents

---

**Coram** :

**Hon'ble Mr. Justice Sujoy Paul, Judge**

**Hon'ble Mr. Justice Mohd. Fahim Anwar, Judge**

---

**Presence** :

Mr. Gopal Jain, Senior Advocate assisted by Mr. Lalji Kushwaha, Advocate for the petitioner in RP-1076-2019.

Mr. Ajay Choudhary, Advocate assisted by Mr. Lalji Kushwaha, Advocate for the petitioner in RP-1077-2019.

Mr. Rahul Deshmukh, Panel Lawyer for the respondents-State.

Mr. Abhishek Arjaria, Advocate for the private respondents/employees.

---

*Whether approved for reporting* : **Yes**.

---

***Law Laid Down*:**

- ***Review Petition-*** *Review petition can be entertained if there exits a mistake or error which is apparent on the face of record. Under the garb of review, the petitioner cannot be permitted to re-argue or re-agitate the entire matter. Re-appraisel of evidence or re-hearing of case without there being any error apparent is impermissible.*

- ***Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955*** *- This is a beneficent piece of legislation. Thus, it is to be liberally construed. It cannot be interpreted in a hyper technical manner which may result into strangulating the litigant.*

- ***Rule 36 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957*** *– Statutory Form "C" - Rule used the word "shall". The argument that the application must be in the prescribed form, otherwise the proceeding based thereupon must fail not acceptable. A beneficent provision cannot be read in a hyper technical manner. The process of conflict resolution is informal and demands a liberal approach.*

- ***Prescribed Form "C"*** *- It is the "substance" which will determine whether the application is maintainable or nor and not the "form" of the application.*

- ***Procedural law*** *– should not be given effect to in a hyper technical manner.*

---

Significant paragraphs: **13, 15 & 16.**

---

Heard on: 18.12.2020 *through video conferencing.*

---

**O R D E R**

(*Passed on this 18th day of December, 2020*)

**Per: Sujoy Paul, J :**

These review petitions are arising out of a common order dated 18.07.2019, passed in WP-17859-2016 & WP-18489-2016. The petitioners submit that the matter is related to "**Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955**" (in short the "**WJ Act**").

**2.** By taking this Court to Section 17(2), Shri Jain, learned senior counsel urged that a statutory procedure is prescribed for adjudication of a "dispute". If there exists a "dispute", the mechanism is prescribed under sub-section (2) of Section 17 of the WJ Act. Thus existence of a "dispute" is a pre-condition to invoke Section 17(2) of the WJ Act.

**3.** In the instant matters, the applications filed by the workmen does not fall within the ambit of "dispute" and, therefore, the very basis on the strength of which proceedings could be started before the authority was not available. The next contention is that Rule 36 of the "**Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957**" (for short the "**Rules of 1957**") prescribes a statutory Form "C". Referring to the language employed in Rule 36, Shri Jain argued that the law makers have chosen to use the word "shall" which leaves no room for any doubt that the provision is mandatory. Thus, the application can be entertained only when it is filed in statutory Form "C". If the applications preferred by the employees are examined on the anvil of statutory From

"C", it will be clear that same are not in the prescribed form. The law is well settled that if a thing is prescribed to be done in a particular manner by a statute, it has to be done in the same manner and other methods are forbidden.

**4.** The error of classification is apparent on the face of the record. If the written submission filed before the authority by the petitioners is seen, it will be clear that there existed a dispute whether the petitioners fall within the category 7 or category 1. Without examining this, the proceedings were not maintainable. The reference is made to **AIR 1958 SC 507, *[Kasturi & Sons (Pvt.) Ltd. Vs. Shri N. Salivateeswaran & Anr.]*** to bolster the contention that as per this Constitution Bench judgment relating to the WJ Act, it is clear that the procedure adopted by the authority runs contrary to Section 17 of the WJ Act which is analogous/akin to Section 33 of the Industrial Disputes Act, 1947.

**5.** Shri Jain has taken us to Para-17 of the order under review and urged that the findings given in this para are factually incorrect and legally improper. In absence of existence of a "dispute", the question of invoking section 17 of W.J Act did not arise.

**6.** Lastly, Shri Jain relied on a chart which is filed as Annexure-A (at Page No.31). He submits that if CTC amount and the amount claimed by employees are examined in juxtaposition, it will be clear like noon day

that what employees have received is much higher than what they claimed in the instant application. Since a more favourable benefit is received by them, their application under Section 17 was not maintainable.

**7.** On the basis of aforesaid contentions, learned senior counsel submits that the order under review contains factual as well as apparent legal error which can be corrected in exercise of review jurisdiction.

**8.** Countering the aforesaid, Shri Arjaria, learned counsel for the private respondnets submits that the authority under the W.J Act passed the order dated 19.09.2016 which became subject matter of challenge. The written submissions on which learned senior counsel have placed reliance were filed on 20.09.2016 (Annexure-P/11). The written submission filed after final order is passed, is of no assistance to the petitioners. The Revenue Recovery Certificate (RRC) was also issued on 19.09.2020. The additional return or submission filed subsequent to the final order cannot be a ground for review. In support of this contention reliance is placed on Para- 5.13 of the petition.

**9.** Shri Arjaria placed heavy reliance on the order passed by Indore Bench in WA-193-2019. The Rajasthan Patrika/ petitioner unsuccessfully filed RP-1429-2019, which was dismissed on 05.11.2019. Under the garb of review petition, the petitioner cannot be permitted to re-argue the matter or raise the same points which have already been adjudicated on

merits. Lastly, it is urged that if employees' application (Annexure-P/4) is examined in juxtaposition to prescribed Form "C", it will be clear that in substance it is same and pregnant with necessary details. Thus, on technical ground, employees cannot be non-suited. The chart Annexure-A was not part of the writ petition, submits Shri Arjaria and, therefore, new factual matter cannot be a reason to entertain a review petition.

**10.** In rejoinder submission, Shri Jain urged that Rule 36 uses the word "shall" which means that application of employee must be strictly in the statutory Form "C". If edifice/foundation of application is incorrect, the entire building of proceedings founded upon it must collapse. Shri Choudhary advanced the arguments in similar lines.

**11.** No other point is pressed by counsel for the parties.

**12.** We have heard the parties at length and perused the record.

**13.** This is trite that scope of review is very limited. Under the garb of review, the petitioner cannot be permitted to re-argue the matter on merits (unless an error apparent on the face of record is pointed out). No long drawn arguments can be entertained to fish out such error. (**See**: **(2009) 14 SCC 663**, ***[Inderchand Jain (dead) through LRs vs. Motilal (dead) through LRs]*** & **(2009) 10 SCC 464**, ***[S. Bagirathi Ammal vs. Palani Roman Catholic Mission]***).

**14.** The argument advanced by Shri Jain, learned senior counsel relating to applicability of Section 17 was dealt with in great detail in order dated 18.07.2019. Para-14 of the order under review (reproduced in Para-18 of this order) is the complete answer to this argument. No case is made out to revisit the said aspect in this review jurisdiction.

**15.** Rule 36 of the Rules of 1957 reads as under:

> "**36. Application under section 17 of the Act.** - An application under section 17 of the Act shall be made in Form C to the Government of the State, where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed, is situated."

True it is that Rule 36 of the Rules of 1957 is pregnant with the word "shall". The question is whether the rule can be read in the manner suggested by Shri Jain and Shri Choudhary. We are unable to persuade ourselves with the line of argument advanced by learned counsel for the petitioners. The intention of law makers is to enable and encourage the litigant to file their application in the prescribed form so that the necessary details are spelled out. If such details are otherwise available, although in a different manner, merely because such application was not filed in the prescribed form, the application cannot be thrown to winds. It is the "substance" which will decide the entertainability of application and not the "form".

**16.** The WJ Act, in our considered opinion, is a beneficent piece of legislation. It cannot be read in a hyper technical manner to strangulate a litigant. While dealing with another beneficent provision, namely, the Industrial Disputes Act, 1947, Krishna Iyer, J in **(1976) 3 SCC 832**, ***[The Mumbai Kamgar Sabha, Bombay vs. M/s. Abdulbhai Faizullabhai & others]*** opined as under:

> "7. …….The substance of the matter is obvious and formal defects, in such circumstances, fade away. We are not dealing with a civil litigation governed by the Civil Procedure Code but with an industrial dispute where the process of conflict resolution is informal, rough-and-ready and invites a liberal approach. Procedural prescriptions are hand-maids, not mistresses, of justice and failure of fair play is the spirit in which courts must view processual deviances. Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause title create a secret weapon to non-suit a party. Where foul play is absent, and fairness is not faulted, latitude is a grace of processual justice……"
>
> [Emphasis Supplied]

**17.** The reference may be made to **(2012) 7 SCC 788**, ***[Ponnala Lakshmaiah vs. Kommuri Pratap Reddy & others]*** wherein the election petitioner urged that Section 83(1) of the Representation of Peoples Act, 1951 read with Rule 94-A of the Conduct of Election Rules, 1961 shows that the word used in the statute is "shall", which make it mandatory/obligatory for the petitioner to support the averments by an

affidavit filed in a *prescribed form*. The Apex Court repelled the said argument by holding thus:

> "28. …..The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice…."
>
> [Emphasis Supplied]

**18.** In view of scheme and object of WJ Act, the liberal interpretation should be given to the provisions in order to advance the cause of justice. This is settled law that all the rules of procedure are the handmaid of justice. The Apex Court in **AIR 1955 SC 425**, ***Sangram Singh* v. *Election Tribunal, Kotah*** opined that A code of procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against. The Apex Court in **(1975) 1 SCC 774**, ***Sushil Kumar Sen* v. *State of Bihar*** opined that the mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the

handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence-processual, as much as substantive. In **(1976) 1 SCC 719**, ***State of Punjab* v. *Shamlal Murari***, the Apex Court held that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In **(1984) 3 SCC 46**, ***Ghanshyam Dass* v. *Dominion of India*** the Apex Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle. In **(2005) 4 SCC 480**, ***Kailash* v. *Nanhku*** the Apex Court held that the provisions of Civil Procedure Code or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

**19.** The Representation of Peoples Act, 1951 and the Conduct of Election Rules, 1961 are more technical in nature if compared with ID Act or WJ Act. Despite that, the Apex Court was not impressed with the hyper technical argument based on “form” and insisted on “substance”. In the instant matters employees could not show any prejudice being caused to

them if applications were not filed in the prescribed form. Thus, this argument advanced by the petitioners is devoid of substance.

**20.** The judgment of Supreme Court in ***Kasturi & Sons (Pvt.) Ltd. (supra)*** was considered in later judgments. While deciding the writ petition, this Court has given finding by passing a reasoned order. The petitioners cannot be permitted to reagitate the said issue in the review. We do not find any error apparent on the face of record which requires review of Para-17 of the order. It is common ground raised by Shri Jain, learned senior counsel and Mr. Choudhary that petitioners filed written submissions before the final order could be passed by the authority below. Thus, the ground so raised in the written submission ought to have been considered by the authority.

**21.** In our view, this Court has dealt with this aspect in Para-14 of the order under review, which reads as under:

> "**(14)** This is settled in law that if something is pleaded in the claim application, the same must be denied with accuracy and precision while filing the reply. If reply is pregnant with relevant pleadings, necessary arguments can be advanced based thereupon either orally or by way of filing written submission. In the main reply, there is no denial of quantification of amount claimed by the employee. In absence thereto, it cannot be said that there exists a dispute on the question of claim (to the tune of Rs.9,06,108/-). In other words, a party can say that there exists a dispute when a claim preferred is categorically denied by the other side while filing reply. In **2008 (4) MPLJ 536**, ***[Smt. Gomti Bai Tamrakar & ors. vs. State of M.P. & ors.]*** and **2007 (3)**

> **MPHT 309 (DB)**, ***[Nagda Municipality vs. ITC Ltd.]***, the Courts opined that if reply or pleading are silent on a question of fact, no amount of argument can be advanced and accepted. For this reason, we are unable to hold that present petitioners disputed the claim of the petitioner. The alleged dispute raised was founded upon Clause 20(j) of the Majithia Wage Board award. At the cost of repetition, in our opinion, in Para-26 of the judgment of ***Avishek Raja (supra),*** the Apex Court made it clear that by invoking clause 20(j), lesser wages than the wages flowing from W.J. Act cannot be granted. Thus, dispute in this regard raised by the employer is no dispute in the eyes of law. So far the orders of Labour Court Jaipur are concerned, the said orders were neither placed before the authority below nor before this court. Accordingly, this dispute also does not exist in the eyes of law. In ***Avishek Raja (supra)***, it is made clear that if there exists no dispute, Section 17(1) can be invoked. In the instant case, as analyzed, the employer has failed to raise any actual dispute while filing the reply before the Deputy Labour Commissioner."
>
> [Emphasis Supplied]

Thus, this aspect cannot be permitted to be reagitated in these review petitions.

**22.** For the reasons stated above, no case is made out to exercise review jurisdiction. **Review petitions fails and are hereby dismissed.**

**(SUJOY PAUL)**
**JUDGE**

**(MHOD. FAHIM ANWAR)**
**JUDGE**

*s@if*