VERDICTUM.IN

2024:BHC-AS:10347-DB

?P

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9112 OF 2019

Shri Indrakumar Jain
B-303, Runwal Towers,
Co-operative Housing Society Ltd.
Kolbad, Thane (West) – 400 601 … Petitioner

V/s.

M/s. Dainik Bhaskar
B-1, 405, Marathon Innova
Ganpat Rao Kadam Marg
Lower Parel, Mumbai – 400 013

2. Shri Manmohan Agarwal
Chairman – Chief Editor
M/s. Dainik Bhaskar
B-1, 405, Marathon Innova
Ganpat Rao Kadam Marg,
Lower Parel, Mumbai – 400 013 … Respondents

with
WRIT PETITION NO. 12022 OF 2019

1. M/s. Dainik Bhaskar
B-1, 405, Marathon Innova
Ganpat Rao Kadam Marg
Lower Parel, Mumbai – 400 013

2. Shri Manmohan Agarwal
Chairman – Chief Editor
M/s. Dainik Bhaskar

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

B-1, 405, Marathon Innova
Ganpat Rao Kadam Marg,
Lower Parel, Mumbai – 400 013 … Petitioners

V/s.

Shri Indrakumar Jain
B-303, Runwal Towers,
Co-operative Housing Society Ltd.
Kolbad, Thane (West) – 400 601 ... Respondents

with
WRIT PETITION NO. 3541 OF 2019

M/s. Pioneer Book Co. Pvt. Ltd. … Petitioners

V/s.

Devendra Pratap Singh
Rajendra Honey Comb Children Home
1st Floor, D-1, Old Ostwal Tower,
Khargaon, B.P. Road Bhayendar (East),
Thane ... Respondents

Mr. Sanjay Singhvi, Senior Advocate with Mr. Bannet D'Costa and Ms. Jignasha Pandya for the Petitioner in WP 9112/2019 and for Respondents in WP 12022/2019 and Applicant in IA 1382/2021

Mr. Anand R. Pai a/w. Mr. Pratik Kothari i/b. Mr. Avinash Patil for the Petitioners in WP 12022/2019 and for the Respondents in WP 9112/2019

Mr. Vijay Vaidya a/w. Mr. Mahendra Agvekar and Ms. Shraddha Chavan for the Petitioner in WP 3541/2019
Ms. Jane Cox i/b. Ms. Karishma Rao for the Respondents in WP 3541/19

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

CORAM : NITIN JAMDAR &
SANDEEP V. MARNE, JJ.

RESERVED ON : 4 SEPTEMBER 2023

PRONOUNCED ON : 29 FEBRUARY 2024

JUDGMENT (Per Nitin Jamdar, J.) :-

These Petitions are placed before us upon the reference made by the learned Single Judge to answer the question of maintainability of a complaint of unfair labour practice by a working journalist before an Industrial Court on the basis that a working journalist is covered by the definition of "employee" under Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

2. Writ Petition Nos. 9112 of 2019 and 12022 of 2019 are cross-petitions challenging the order passed by the Industrial Court in the Complaint filed by Indrakumar Jain, a working journalist. The Industrial Court has dismissed the complaint. Writ Petition No.9112 of 2019 is filed by Indrakumar Jain challenging the order of the Industrial Court in its entirety as his complaint has been dismissed holding that he is not an 'employee' under Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices (MRTU & PULP) Act, 1971. The employer, Newspaper establishment-Dainik Bhaskar, has filed Writ Petition

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

No.12022 of 2019 to the limited extent of findings about the absence of liability of Indrakumar Jain.

3. Writ Petition No. 3541 of 2019 involves a dispute between a newspaper establishment- Pioneer Book and Devendra Pratap Singh, a working journalist. Pioneer had objected to the maintainability of the complaint by Devendra Pratap Singh filed under the provisions of the MRTU & PULP Act on the ground that he does not fall in the definition of the term 'employee' within the meaning of Section 3(5) of the MRTU & PULP Act. The Labour Court directed Pioneer to reinstate Devendra Pratap Singh with full back-wages and continuity of service with arrears of wages. The Industrial Court rejected the Revision Application, and both orders are challenged.

4. When these Petitions came for consideration before the learned Single Judge (S.C. Gupte, J.) arguments centered around the issue as to whether working journalists could be considered as 'employee' under MRTU & PULP Act, 1971. Following decisions of the learned Single Judges of this court were placed on record.

(a) *Bennett Coleman Co. Ltd. v/s. Mumbai Mazdoor Sabha* [1] (D.R. Dhanuka, J.)(referred to as Bennet Coleman-1)

(b) *Bennett Coleman v/s. Gurbir Mahavir Singh*[2] *(D.R. Dhanuka, J.) (referred to as Bennet Coleman-2).*

1 1994 LAB. I.C. 1889
2 O.S.W.P.687/1988 dtd. 27.04.1994

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

(c) *Shashikaran R. Shrivastava V/s. Bennett Coleman & Co.*[3] (R.P. SondurBaldota, J.),

(d) Mahesh H. Rajput v/s. United News of India[4] (R. G. Ketkar J.)

The learned Single Judge (S.C. Gupte, J.) opined that there existed a conflict in the views taken in these judgments and the issue was of importance and directed the registry to place the matters before the learned Chief Justice to consider constituting a larger bench. There is no separate issue framed and by consent of parties, we take observations in paragraph 6 of the referral order as the question referred by the Single Judge. It reads thus :-

> *"6. In the premises, the Registry may place this Petition before the Hon'ble the Chief Justice for assigning it to a Division Bench on the question of maintainability of a complaint of unfair labour practice by a working journalist before an Industrial Court on the basis that he is covered by the definition of "employee"under Section 3(5) of the MRTU and PULP Act, 1971."*

5. The interplay between the three statutory provisions is involved. They are :

(a) Section 3 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Working Journalists Act). Section 3 of the Working

3 2017 II CLR H.C. Bom.65
4 2017 III CLR H.C. Bom. 1002

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

Journalists Act states that the provisions of the Industrial Disputes Act, 1947 (ID Act) 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 that Act.

(b) Section 2(s) of the Industrial Disputes Act, 1947 (ID Act). Section 2(s) of the ID Act defines a "workman" as any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for any proceeding under the ID Act about an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute. It excludes certain persons, such as those in the armed forces, police service, or prison, employed mainly in a managerial or administrative capacity or a supervisory capacity with specified wages.

(c) Section 3(5) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act). Section 3(5) of the MRTU & PULP Act states that an employee would also mean a workman as defined in Section 2(s) of the ID Act.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

6. The Working Journalists Act defines the rights and obligations of the working journalists and their employers, empowers the government to set and revise wages and conditions, and provides job security measures. Additionally, it establishes a mechanism for dispute resolution. This Act has twenty one Sections and a Schedule appended to it. Chapter II of the Act deals with the working journalist. Chapter IIA is regarding non-journalist newspaper employees. Chapter III states the application of certain acts to newspaper employees, and Chapter IV contains miscellaneous provisions. Under the rules-making power under Section 20 of the Act, the Central Government has made certain Rules to carry out the object of the Act.

7. Section 2 of the Working Journalists Act lays down the definitions of the terms used under the Act. Section 2(b) defines the Newspaper as any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as may, from time to time, be notified on this behalf by the Central Government in the Official Gazette. Section 2(d) defines a Newspaper Establishment to mean an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate, including newspaper establishments specified under the Schedule. Under

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

Section 2(f), the working journalist is defined as a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or about, one or more newspaper establishments and includes an editor, a leader-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 is employed mainly in a managerial or administrative capacity or being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or because of the powers vested in him, functions mainly of a managerial nature. Section 2(g) states that all words and expressions used but not defined under the Working Journalists Act and defined under the Industrial Disputes Act, 1947 shall have the meanings respectively assigned to them in that Act.

8. Section 3 of the Working Journalists Act is important for the present controversy. Section 3(1) reads as under :-

> "*3. Act 14 of 1947 to apply to working journalists. -*
>
> *(1) The provisions of the Industrial Disputes Act, 1947 (14 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 that Act.*
>
> *(emphasis supplied)*

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

Thus, under Section 3, the provisions of the ID Act apply to the working journalists as they apply to the workmen.

9. Section 4 of the Working Journalists Act makes special provisions for certain cases of retrenchment of working journalists during the period specified therein. Section 5 provides for payment of gratuity to the working journalists, and under Section 5(A), the working journalists can provide for nomination in respect of the gratuity. Section 6 regulates the working hours of the working journalists. Under Section 7, an entitlement to leave is conferred on the working journalist.

10. The wages of the working journalists are elaborately dealt with under the Act. Section 8 of the Working Journalists Act deals with the fixation or revision of wage rates for the working journalists. Under Section 8, the Central Government is empowered to fix the wages of working journalists and revise the fixed rates of wages. Sections 9 and 10 deal with the procedure for fixing and revising the rate of wages. Under Section 9, the Central Government is entitled to constitute a wage board. The recommendations made by the Board are dealt with under Section 10 of the Act. The powers and procedures of the Board are specified under Section 11. The Central Government's power to enforce the Wage Board's recommendations is provided under Section 12 of the Act. Under Section 13, the entitlement of the working journalists to wages at

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

rates not less than those specified in the order is provided for. Section 13A permits the Government to fix interim rates of wages. Section 13AA provides for contingencies whether the Central Government is of the opinion that the Wage Board is unable to function for any reason to constitute a tribunal. Section 14 makes the provisions of the Industrial Employment Standing Order 1946 applicable to the newspaper establishment subject to certain conditions. Similarly, under Section 15, the Employers' Provident Fund Act applies to the Working Journalist subject to conditions. Under Section 16 the provisions of this will have an overriding effect on any award, agreement, etc., if it is less beneficial to the working journalists. Section 17 makes special provision for recovery of dues of a working journalist. The Central Government, under Section 20, has framed Rules regarding the fixation of rates of wages. These are the basic provisions applicable to the working journalists under the Working Journalists Act.

11. Under Section 2(k) of the Industrial Disputes Act of 1947, "Industrial Dispute" is defined as any dispute or difference between employers and employers, between employers and workmen, or between workmen and workmen. "Workman" is defined under Section 2(s) which reads thus :-

> *"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled (technical, operational, clerical or supervisory*

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –
(i) who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or
(ii) who is employed in the police service or as an officer or other Employee of a prison, or
(iii) who is employed mainly in a managerial or administrative capacity, or
(iv) who, being employed in a supervisory capacity, draws wages exceeding [Ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature].”

This definition has undergone changes. The definition of "workman" when the ID Act came into force in 1947 was any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It did not include any person who is subject to Air Force or Army, or Navy Act. The definition was amended by the Act of 1956. The amendment brought into its fold not only unskilled and skilled manual workers but also those who did unskilled or skilled work, whether manual or not. Those persons employed to do operational work were also brought within the fold of the definition.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

12. The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act MRTU & PULP was enacted in the year 1971 to provide for recognition of trade unions for facilitating the collective bargaining for certain undertakings, to pursue their rights and obligations, to confer certain powers on unrecognised unions to deal with the strikes and lock-outs and also to define and provide for the prevention of certain unfair practices; also to establish courts for the purpose of the Act. Section 3(2) refers to the "Central Act" under the MRTU & PULP Act to mean the Industrial Disputes Act, 1947. Section 3(5) defines "employee", which reads thus :

> *"3(5). "employee", in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act, and in any other case, means a workman as defined in Clause (s) of Section 2 of the Central Act, and sales promotion employee as defined in Clause (d) of section2 of the Sales Promotion Employees (Conditions of Service) Act, 1976,"*

Thus, an employee in relation to an industry also means a workman as defined in Section 2(s) of the ID Act and a sales promotion employee as defined in Clause (d) of Section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976. Section 3(13) of the MRTU & PULP Act defines a "recognised union" as a union that has been issued a certificate of recognition under Chapter III. "Union" is defined under Section 3(17) as a trade union of

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

employees, which is registered under the Trade Unions Act, 1926. Chapter II of the Act deals with authorities under the Act. Recognition of unions is regulated under Chapter III. Obligations of the unions and employees are stated under Chapter IV. Under Section 20 of the Act certain amendments have been framed. By power exercised under Section 61 of the Act, Rules have been framed for the recognition of trade unions and the prevention of unfair labour practices.

13. This is broadly the statutory framework concerning the question at hand.

14. We have heard Mr. Sanjay Singhvi, the learned Senior Advocate and Ms. Jane Cox, learned Counsel for Petitioner – Working Journalists (the Journalists). Mr. Vijay Vaidya and Mr. Anand Pai, learned Counsel for the Newspaper Establishments (the Management.)

15. Before we address the arguments on the question whether the working journalists are 'employees' under the MRTU & PULP Act, we will deal with the submission of the Management that the reference to the larger Bench was not necessary.

16. The Management submitted that the learned Single Judge should not have referred the question to the larger Bench

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

because there were no conflicting decisions, and the only binding judgment on this question is of Baldota, J. in *Shashikaran R. Shrivastava.* It is submitted that the decision in *Shashikaran Shrivastava* was binding on the learned Single Judge, and the reference order does not give reasons as why the view taken in *Shashikaran Shrivastava is* to be doubted; consequently, the reference to larger bench was not correct. The Journalists submitted that there existed a conflict, and the learned Single Judge could and has made a reference to the larger Bench because an important question has arisen.

17. The issue as to whether employee defined under the MRTU & PULP Act would also mean the working journalist came up for consideration before the learned Single Judge (D.R. Dhanuka, J.) in the case of *Bennett Coleman-1*. In this case the employer had challenged the order passed by the Industrial Court on an application for interim relief by the complainant. The complaint was regarding the continuation and induction of an editor in a newspaper. The employer filed a written statement contending that a working journalist was not an employee under Section 3(5) of the MRTU & PULP Act. The employer also contested the prayer for interim relief on merits. After the grant of interim relief by the Industrial Court, the employer filed a writ petition challenging the order. At that time, the employer had pointed out that a Writ Petition was admitted and was pending a hearing, and the order of

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

admission clearly stated that it was so admitted because the question of law was raised whether the MRTU & PULP Act would apply to a working journalist. D.R. Dhanuka, J. opined that it is a need of the hour that the jurisdictional question must be decided by the High Court as soon as possible and, therefore, sought to decide the question at the stage of admission.

18. D.R. Dhanuka, J. in *Bennett Coleman-1* first referred to the provisions of the Working Journalists Act and the ID Act and analyzed the provisions of the Working Journalists Act and the definitions contend therein. Thereafter, D.R. Dhanuka, J. referred to the provisions of the MRTU & PULP Act and observed thus :-

> *"13. To my mind, it is quite clear that the definition of 'workman' as defined in clause (5) of S.2 of the Industrial Disputes Act, 1947 read with S.3 of the Working Journalists Act (45 of 1955) is in term incorporated in Maharashtra Act 1 of 1972 while defining the expression "employee". S. 28 of the said Act provides that a complaint relating to unfair labour practice may be filed by any union or an employee or an employer or an Investigating Officer. Thus, if the working journalists can be considered as Employee within the meaning of S.3(5) of the Act, it must follow that the Industrial Court had jurisdiction to entertain the complaint and the complaint was clearly maintainable even in so far as it concerned working journalists.*
>
> ***
>
> *17. It is well settled law that where a fiction is created by a provision of law, the Court must give full effect to the fiction. It is well settled that the Court should not*

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

allow its imagination to be beggled by any other imagination. Fiction must be given its due play. There is no half way stop. If necessary, a reference may be made to the recent judgment of the Supreme Court in the case of Union of India v. M/s. Jalan Udyog reported in AIR 1994 SC 88.

18. The definition of the expression "employee" in Maharashtra Act 1 of 1972 incorporates the definition of the expression "workman" as set out in Clause (s) of S.2 of the Industrial Disputes Act, 1947. The definition of the expression "workman" as defined in Clause (s) of S.2 of the Industrial Disputes Act, 1947 is applicable to the working journalists by virtue of the provisions contained in S.2(g) and S.3 of the Act No.45 of 1955. Maharashtra Act No.1 of 1972 cannot be read in isolation. The scheme and object of the said Act is more than clear if one takes note of S.59 of Maharashtra Act 1 of 1972. It is open to the employees as defined in Maharashtra Act 1 of 1972 or to the workmen as defined in Industrial Disputes Act, 1947 to invoke the machinery provided by Maharashtra Act No.1 of 1972 or the machinery provided by the Industrial Disputes Act, 1947.

19. In view of the above discussion, I held that both the complaints filed by the respondent No.1 were maintainable in law and the Industrial Court has jurisdiction to entertain the said complaints. It is hereby clarified that this finding is not to be treated as an expression of view of the Court at an inter-locutory stage. This view is taken by the Court finally for all purposes including for the purpose of deciding the pending complaints as well as pending writ petitions before the single Judge of this Court."

After holding that the complaint was maintainable, D.R. Dhanuka, J.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

proceeded to examine the matter on merits and by order dated 25 April 1994, issued Rule, admitted the Petition and passed certain interim directions and further order came to be passed on 29 April 1994. Thereafter, D.R. Dhanuka, J. disposed of the Petition – *Bennet Coleman -2*, relying on the order passed in *Bennet Coleman -1,* observing thus:

> *" By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned order dated 9th February 198. passed by Industrial Court in Complaint (ULP) No. 425 of 1985.*
>
> *2. On 25th March 1988, this petition was admitted by Bharucha, J. as His Lordship then was. The learned judge specifically observed in his Order dated 25th March 1988, that the petition was admitted because it raised the question Does the M.R.T.U. & P.U.L.P. Act apply to Working Journalist ? The learned Judge specifically on order to the effect that the order of the Industrial Court was not stayed and the First Respondent was free to enforce the said Order.*
>
> *3. Shri S.C. Dharmadhikari, learned Counsel for the petitioner submits that the working journalist cannot be considered as employee within meaning of Section 3(5) of M.R.T.U. & P.U.L.P. Act 1971. The learned counsel submits that the working journalists are entitled to involve certain provisions of Industrial Disputes Act, 1947 by reason of the fiction created by working journalists Act 45 of 1955 and the said fiction cannot be extended for the purpose of M.R.T.U. & P.U.L.P. Act 1971. Similar arguments were advanced by the learned counsel in Writ Petition No. 1079 of 1994. By my Judgment dated 25th April 1994, in Writ Petition No. 1079 of 1994 and Writ Petition No. 1090 of 1994, I*

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

> *have taken the view that the working journalists are workman within definition of the expression 'workmen' as set out in Section 2(s) of Industrial Disputes Act, 1947 and are employees within meaning of the said expression as defined in Section 3(5) of M.R.T.U. & P.U.L.P. Act."*
>
> (emphasis supplied)

There was no independent reasoning except the reliance on the decision in *Bennet Coleman-1.*

19. An Intra Court Appeal was filed against the orders passed in *Bennet Coleman* -1, and the Appeal Bench allowed the Appeal[5] observing thus :-

> *"4. The appellants preferred Writ Petition No.1079 of 1994 under Article 226 of the Constitution before the learned Single Judge sitting on the Original Side. The learned Judge heard the matter for admission on various dates and by a long drawn speaking order, issued Rule restricted to the controversy in respect of interpretation of clause 10 of the settlement. The learned Judge made it clear that as far as jurisdiction and maintainability of the complaint is concerned, the controversy shall not be reopened. The learned Judge then while directing a stay of the order passed by the Industrial Court, substituted the interim order by giving several directions. We need not set out all that directions in the present judgment as in our judgment, the course adopted by the learned Judge was entirely uncalled for.*
>
> *5. Mr. Dada, learned Counsel appearing on behalf of the appellants submitted that the appellants approached*

5 Appeal No. 337/1994, 25 July 1994

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

this Court to challenge the interim order passed by the Industrial Court and it was not proper to write a long judgment and conclude the appellants on various issues which were not even considered by the Industrial Court. Mr. Dada pointed out how interim order passed by the learned Judge is entirely unworkable and unsustainable both in facts and in law. Mr. Sawant, learned Counsel appearing on behalf of the respondents found it very difficult to sustain the order. In our judgment, the order passed by the learned Single Judge cannot be sustained. Equally the order passed by the Industrial Court at the interim stage cannot be sustained. ....

***

7. Accordingly, appeal is allowed and order dated April 25, 1994 and order dated April 29, 1994 passed by the learned Single Judge in Writ Petition No.1079 of 1994 are set aside. The order passed by the Industrial Court on February 17, 1994 below Exh. U-2 in Complaint No. 1260 of 1993 is also set aside. The Industrial Court is directed to dispose of the complaint on or before October 31, 1994. The Industrial Court shall examine all the contentions raised by the parties and the Industrial Court is not bound by any of the observations made in the order passed by the Industrial Court earlier or by the learned Single Judge and which orders are set aside. The Industrial Court shall not dispose of the complaint on any preliminary issue but all the contentions should be decided together. The undertaking of the appellants not to fill up any posts set out in Annexure 'F' to the complaint, and which are not yet filled up, is accepted. The question as to whether any posts out of the list Annexure 'F' are filled up or not is also left open for determination.

In view of this judgment, Writ Petition No. 1079 of 1994 does not survive and stands dismissed.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

In the circumstances of the case, there will be no order as to costs."

(emphasis supplied)

The view taken by D.R. Dhanuka, J. in *Bennet Coleman-1* was thus set aside by the Appeal bench.

20. The next decision noted in the reference order is of the learned Single Judge (Smt. R.P. Sondurbaldota, J.) in the case of *Shashikaran R. Shrivastava*. The journalist – Shrivastava therein was working as a sub-editor with Bennett Coleman Co. Ltd. The journalist – *Shrivastava* filed complaint alleging unfair labour practice. The Industrial Tribunal dismissed the complaint, holding that the complaint was not maintainable as the journalist – Shrivastava was not an employee within the meaning of Section 3(5) of the MRTU & PULP Act. Thereafter, Shrivastava approached the High Court. Shrivastava *inter alia* argued that a working journalist was an "employee" under the MRTU & PULP Act by operation of law, and secondly, the actual work done by the working journalist therein would be place them within the definition of Section 2(s) of the ID Act. Shrivastava argued that Section 3(2) of the Working Journalists Act creates a legal fiction by which the working journalists are to be treated as a workman for all purposes under the ID Act, and since the Working Journalists Act was already in existence when MRTU & PULP Act was brought into force, the

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

legislative intent to include working journalist in the definition of employee under the MRTU & PULP Act was clear. Shrivastava also contended that Section 3(1) of the Working Journalists Act amounts to legislation by reference, and in the manner the matter of legislation by reference, the subsequent amendments must be read into the referring Act. Baldota, J. framed a specific question as to whether the working journalists were employees within the meaning of Section 3(5) of the MRTU & PULP Act and answered it in the negative. Baldota, J. took the view that working journalist cannot be considered an employee under Section 3(5) of the MRTU & PULP Act. The relevant observations and conclusions are as under :-

> *"1. These petitions filed under Article 226 of the Constitution of India raise the following common question of law:*
>
> > *"Whether a Working Journalist within the meaning of Section 2(f) of The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 ("The W. J. Act", for short) is an employee within the meaning of Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("The PULP Act", for short)."*
>
> *****
>
> *8. In the circumstances in my considered opinion, it can not be said that the W. J. Act creates a fiction whereby working journalists are to be treated as a workman for all purposes under the I. D. Act.*

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

9. The second and alternate argument of Mr. Sanghavi is that as per Section 3(1) of the W. J. Act, all subsequent amendments of the I. D. Act will apply to working journalists as they apply to other workmen covered under the I. D. Act. He argues that Section 3(1) of the W. J. Act amounts to legislation by reference and in a matter of legislation by reference, the subsequent amendments in the Act referred to must be read into the referring Act also. The provision of Section 3 of W. J. Act reads as under : ....

He argues that the PULP Act is in the nature of an amendment to the I. D. Act and therefore the PULP Act must apply to working journalists. According to him, Section 20(2) of the PULP Act actually amends the I. D. Act and the amendments to the I. D. Act are set out in Schedule-I of the PULP Act. These amendments apply to all industries in the State of Maharashtra for which the State Government is the appropriate Government. Therefore the same will apply to the respondent undertaking.

*****

15. Considering the purpose of the PULP Act its scheme and the specific definitions thereunder of the parties to whom the same is made applicable it is not possible to accept the argument that the entire Act is an amendment to the I.D. Act. It is an independent legislation with a specific object and purpose, creating rights and liabilities for specified persons with provision for the machinery for enforcement of rights and obligations under the Act.

16. As regards Schedule I to PULP Act the amendments to the I.D. Act stated therein must be held to be to ensure that the status granted to the recognised

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

unions in PULP Act is not defeated. Secondly, as conceded by the petitioners W.J. Act in addition to the rights and responsibilities under the I.D. Act, grants some additional and enhanced rights to the working journalists in respect of leave, gratuity, wage boards for fixing of wages and service conditions, etc. Thirdly, as has been rightly pointed out by Mr. Talsania, if the State legislature intended to extend PULP Act to the working journalists it would have simply amended the definition of the term "employee" therein to include the working journalists in the definition. Such exercise has been done in respect of Sales Promotion Employees defined under the Sales Promotion Employees (Conditions of Service) Act, 1976. Therefore, in my opinion, the second argument of Mr. Sanghavi cannot be accepted.

17. The third argument of Mr. Sanghavi is that the petitioners who are working as Senior Sub-editor and Sub-editor respectively, even de-hors the provision of the W. J. Act would be workmen within the meaning of Section 2(s) of the I. D. Act considering the nature of the actual work being done by them. According to him, the exact nature of the work being done by the petitioners being a mixed question of fact and law, oral and documentary evidence thereon will have to be led and for that purpose the interests of justice demand that the matter be remanded to the Industrial Court for determining the exact nature of work done by the petitioners. In support of the submission for remand he relies upon the decisions of this Court in Hindustan Lever Limited V/s. Hindustan Lever Employees Union and Ors. reported in (2007) I CLR 737.

*****

24. The petitioners herein working as sub-editors cannot even claim to be doing a stereotype work. They have to have certain inherent qualities for performing

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

> *their job. They need to have a flair for the language along with the mastery over language. They need to be in tune with the current topics, have sufficient knowledge of subjects like politics, law, science, sports, arts, etc. In fact, as submitted by Mr. Talsania, Majithia Wage Board constituted under Section 9 and 13(c) of the W.J. Act describes the sub-editor as "a person who receives, selects, shortens, summarizes, elaborates, translates, edits and headlines news items of all descriptions and may do some or all of these functions." This description would make their work undoubtedly creative. For the sake of performing their creative work if they have to acquire technical skills to operate the computers, etc. such skill would be only ancillary to their main work. That skill cannot be relevant for deciding whether they are workmen within the definition under Section 2(s) of the I.D. Act. Therefore the third argument of Mr. Sanghavi also needs to be rejected.*
>
> *25. For the reasons stated above it is held that a working journalist within the meaning of Section 2(f) of the W.J. Act is not an employee within the meaning of Section 3(5) of the PULP Act and the petitions are dismissed."*

Baldota, J. thus opined that it cannot be said that the working journalists are not employees under the MRTU & PULP Act. Baldota, J. accordingly disposed of the writ petition confirming the view taken by the Industrial Court.

21. This decision of the learned Single Judge (Baldota, J.) dated 6 August 2015 was challenged by

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

journalist - Shrivastava in the Hon'ble Supreme Court, and the Special Leave Petition to Appeal No. 10228 of 2017 was dismissed by the Supreme Court by order dated 21 April 2017. Review Petition No.1624 of 2017 was also dismissed by order dated 16 August 2017. The view taken by Baldota, J. was confirmed as even review was dismissed.

22. Lastly in the case of *Mahesh Alidas Rajput*, the working journalist – Mahesh Rajput therein was sought to be transferred by the management and he filed the complaint under Section 28 read with Item 3 & 9 of Schedule IV of the MRTU & PULP Act in the Industrial Court, Mumbai. The complaint was dismissed and the writ petition filed by Mahesh Rajput challenging this order was considered by the learned Single Judge (R.G. Ketkar,J). The management therein relied upon the decision in the case of *Shashikaran Shrivastava.* Though the Industrial Court had not dismissed the complaint on the ground of maintainability, the learned Single Judge (Ketkar, J.) observed that the main hurdle in the way of the complainant was the judgment of *Shashikaran Shrivastava* and therefore, the complaint itself was not maintainable.

23. These decisions were placed before the learned Single Judge (S.C. Gupte, J.) when the order making a reference to the larger Bench was passed.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

24. It is important to note that order in *Bennet Coleman* -1 was an interim order. The Appeal bench set aside the order passed in *Bennet Coleman* -1. The order passed in *Bennet Coleman* -2 was completely based on the order passed in *Bennet Coleman* -1, which the Appeal Bench had set aside. Therefore, the view taken by D.R. Dhanuka, J., which is relied upon by the Journalist, was set aside by the Appeal Bench.

25. On the other hand, Baldota, J. considered the matter finally. The issue squarely arose before Baldota, J. as the Industrial Court had dismissed the complaint as not maintainable on the ground that the petitioner therein was not employee within the meaning of Section 3(5) of the MRTU & PULP Act. Therefore, this question arose for consideration before Baldota, J., not by way of an interim order but by final adjudication. Baldota, J. considered all the arguments of the working journalist and concluded that the working journalist could not be considered an employee under the definition of employees under the MRTU & PULP Act. This judgment in *Shashikaran* was subjected to challenge in the Hon'ble Supreme Court. The Special Leave Petition was dismissed, and the Review Petition thereafter was also dismissed.

26. The learned Single Judge in the reference order though noted that the Appeal Bench had set aside the decision in the case of *Bennett Coleman*-1 went on to observe that the decision was

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

presumably set aside on that footing that the order in *Bennett Coleman* -1 was unworkable and that there was nothing to indicate that the Appeal Bench actually found fault with the decision in *Bennett Coleman*-1 on the application of definition of employee. The learned Single Judge also observed that the *Bennet Coleman-2* will have a life of its own. With respect, these conclusions are not correct and are not borne by record. Before the Appeal Bench the correctness of the view taken was also challenged. The arguments of the management before the Appeal Bench were not only an unworkability but correctness both in the facts and law. The order in *Bennet Coleman*-1 was an interim order. The Division Bench observed that in an interim order the question of law finally could not have been decided and had dismissed the Writ Petition itself. Further, the Appeal Bench directed that the Industrial Court will decide the matter without referring to the order in *Bennet Coleman-1*, which was set aside. Therefore, the law laid down in *Bennet Coleman*-1 did not exist. As regard *Bennet Coleman*-2 is concerned it is a short order of three paragraphs with no independent reasoning but sole reliance on the orders passed in *Bennet Coleman*-1. As stated earlier, it is difficult to appreciate the view taken in the reference order that the order passed in *Bennet Coleman*-2 would have an independent life of its own laying down a binding position of law when the order itself states that it is based entirely on *Bennet Coleman*-1. We find merit in the grievance of the Management that

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

no conflict in decisions existed as there was only one considered view on the subject. Therefore, when the learned Single Judge considered the present petitions only one conclusive dicta was holding the field.

27. The next ground given in the referral order is that the issue is of importance. The Management contends that a question could be of importance, but if it is already considered and settled by the Court, unless reasons are given why the existing view needs reconsideration, merely stating that the question is of importance cannot justify a reference. The Management also contended that all the arguments that are sought to be made before the Single Judge and now before this Bench were already argued before Baldota, J. and were concluded and even SLP and review were rejected by the Supreme Court. Even for referring the question to the larger bench matter on the ground of public importance, the referral order should have given reasons as to why the prevailing view, which was binding on the Single Judge needs to be reconsidered. It is correct that the reference order does not give any reasons as to why the view taken by Baldota, J. was incorrect or *per incurium*. Academic debates apart, the principle of legal certainty and stability also needs to be kept in mind.

28. Now that the reference is already made placed before the Bench on the premise the issue is of importance, the learned Counsel for the parties have addressed the Court on the question framed and

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

accordingly we have proceeded.

29. Mr. Singhvi, the learned Senior Advocate and Ms. Cox, the learned Counsel for the Journalists firstly contended that the Maharashtra Legislature, in 1972, when it passed the MRTU & PULP Act was aware of the interpretation of the term "workman," under the ID Act was inclusive of working journalists. The Working Journalists Act incorporates the provisions of the ID Act for working journalists as they apply to workmen, despite the initial definition of "workman" not encompassing all working journalists. All working journalists, regardless of their specific job nature, should be considered workmen under the ID Act. The inclusion of working journalists by the Working Journalists Act in the ID Act must be interpreted as if the term 'working journalist' was included wherever term 'workman' appears. Any subsequent amendments to the ID Act apply to working journalists, as indicated by the phrase "for the time being" in Section 3 of the Working Journalists Act. When a legal fiction is created, the Court's role is to understand the underlying reason and allow the fiction to have full consequences. In this case, the historical context and the Press Commission's report clarify that applying the ID Act to working journalists was crucial, justifying the legal fiction. The Working Journalists Act effectively amended the Industrial Disputes Act in 1955 to include working journalists in the definition of 'workman'. Consequently, when the definition of 'workman' was incorporated into the MRTU & PULP Act in 1972, it

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

automatically included working journalists. The Working Journalists Act also extended the applicability of the Industrial Employment (Standing Orders) Act and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to newspaper establishments, making all relevant labour laws applicable to working journalists. Initially designed for the workmen, the dispute resolution machinery of the ID Act was extended to working journalists, treating them as workmen. Working Journalists Act, 1955, does not provide an independent machinery for implementation but makes other acts applicable to working journalists. It was contended that the disputes can be resolved under the ID Act or the MRTU & PULP Act. Treating working journalists as workmen under the ID Act while not extending the MRTU & PULP Act would create a discriminatory classification. The Maharashtra Legislature was aware of how the word "workmen" has been interpreted in the ID Act, when it enacted the MRTU & PULP Act in the year 1971 and at that time, the definition of the "workmen under the ID Act applied to the working journalist. The Journalists contend that therefore wherever the workmen or their grammatical cognates are used, the ID Act should include the working journalists. This legal fiction must be given its full play and extended to the MRTU & PULP Act. The Journalists have relied on the decisions of the Supreme Court in *Lachaux v/s. Independent Print Ltd.*[6], *Shree Bhagwati Steel Rolling*

6 (2019) UKSC 27

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

Mills v/s. Commissioner of Central Excise[7] and *Kasturi & Sons (Private) Ltd. v/s. Shri N. Salivateeswaran & Anr.*[8] in support of the arguments that the legal fiction created under the Working Journalists Act by treating them as workmen under the ID Act should be given full play. The Journalists have relied upon the decision in the case of *Voltas Ltd. Bombay v/s. Union of India & Ors.*[9]. It is sought to be contended that once a specific general legal fiction is created to advance a public policy and preserve the rights of the individual and institutions and that a legal fiction creates an imaginary state of affairs, then it would entail the natural corollaries of that state of affairs. Based on these decisions, it is contended that the legislature is taken to have known what the law was prior to the enactment, and therefore, there is a presumption that a statute does not alter the existing legal position unless provided either expressly or by necessary implications.

30. Mr. Vijay Vaidya and Mr. Anand Pai, the learned Counsel for the Management countered these submissions contending that the Working Journalists Act is a comprehensive legislation, and not extending other labour statutes to working journalists, except the ID Act, does not create any anomaly or discrimination. The Working Journalists Act does not incorporate the MRTU & PULP Act under Section 3, and as a result, working

7 (2016) 3 SCC 643
8 (1959) SCR 1
9 1995 Supp.(2) SCC 498

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

journalists cannot be considered employees under Section 3(5) of the MRTU & PULP Act. Their status of working journalists does not change to workmen under Section 2(s) of the ID Act. The Working Journalists Act contains provisions for Wage Boards under Sections 9 and 13-C for both working journalists and non-journalist newspaper employees, addressing wage and service condition issues. The Working Journalists Act is a package deal and the working journalists are a class by themselves and their status do not change to being a workmen under Section 2(s) of the ID Act. The legal fiction under Section 3 of the Working Journalists Act is limited and cannot be extended to the MRTU & PULP Act. The Management relies on the decisions of the Hon'ble Supreme Court in the cases of the *State of Maharashtra v/s. Laljit Rajshi Shah* and Ors.[10], *Raj Kumar Khurana v/s. State of NCT of Delhi and Anr.*[11] and *State of A.P. and Anr. v/s. A.P. Pensioner's Association*[12]to submit on the limited nature of legal fiction. The Hon'ble Supreme Court, in these decisions, has laid down the legal position that fiction is not to be extended beyond the language of the provision in which it is created, and the legal fiction enacted for one Act is normally restricted to that Act and cannot be extended to cover another Act. The Management argues that the law is settled that under the garb of interpreting beneficial legislation liberally, legal fiction cannot be stretched beyond what is contemplated and how the working journalists will

10 (2000) 2 SCC 699
11 (2009) 6 SCC 72
12 (2005) 13 SCC 161

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

benefit if a legal fiction is extended to another Act cannot be a ground for extending the legal fiction beyond its object.

31. In short, the Journalists contend that they are to be considered employees under Section 3(5) of the MRTU & PULP Act because they are workmen under Section 2(s) of the ID Act and Section 3(5) of the MRTU & PULP Act in terms include workmen under Section 2(s) of the ID Act. The Journalists contend that therefore they, being employees under the MRTU & PULP Act, are entitled to take recourse to the remedies provided under the PULP Act. The Management contends that the Journalists are to be treated as workmen under Section 2(s) of the ID Act for as a limited fiction and their status as Working Journalists does not undergo a change, and therefore, there cannot be an extension of the fiction beyond the ID Act. The declaration/fiction that the Working Journalists are workmen under Section 2(s) of the ID Act cannot extend the MRTU & PULP Act. Thus the first and main dispute is what is status of the working journalists and the extent of the legal fiction under section 3 of the Working Journalists Act.

32. To examine this issue, a brief review of the legislative history of the Working Journalists Act and the analysis of the provisions of the three enactments need to be undertaken to determine if the Working Journalists Act is a complete code and what the status of the working journalists is.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

33. In the case of *Express Newspapers (Pvt.) Ltd. and Anr. v/s. The Union of India and Ors.*[13], the hon'ble Supreme Court has elaborated the legislative history of the Working Journalist Act. Briefly, it is as follows. Initially, the newspaper industry in India was led by prominent figures in various fields. Eventually, the industry became profit-driven with significant investments from business houses Journalists nationwide advocated for fair wages, benefits, and working conditions. Government committees were formed in Uttar Pradesh and Madhya Pradesh to address these concerns. In 1951, formation of a commission to examine the state of the Press in the country was suggested. Press Commission was established and it submitted its report in 1954. The Press Commission's recommendations addressed several key issues, including the need for collective bargaining or adjudication to determine journalist salaries, considering the varying resources and conditions across newspapers. The Commission emphasized the influential role of journalists in shaping public opinion and stressed the importance of adequate wages and conditions to attract talent. It also recommended that the division of localities account for differing living costs and suggested specific allowances accordingly. The Commission examined the applicability of labour laws to journalists and made recommendations regarding tenure, notice periods, working hours, leave, retirement benefits, and legislation to regulate the newspaper

13 AIR 1958 SC 578

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

industry. Following the Press Commission's report, a statute was enacted, applying the ID Act of 1947 to journalists. Later a bill was introduced in November 1955 to regulate service conditions, incorporating Press Commission recommendations on notice periods, bonuses, rest days, leave, and provident funds to meet the demands for improved conditions. The Act, titled "The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955," was passed on December 20, 1955, to achieve these objectives.

34. As the reading of Section 3 of the Working Journalists Act would show that, it provides a forum for the working journalist to adjudicate their dispute by taking recourse to the machinery under the Industrial Disputes Act of 1947. It is pertinent that in Section 3, there is no reference in that regard to non-journalist newspaper employee as defined under Section 2 (dd) as they would even otherwise fall within the ambit of Section 2 (s) of the ID Act if the nature of work performed by them forms in the inclusive part of the definition of workman.

35. The scheme of the Working Journalists Act would demonstrate a special status conferred on the working journalists. Chapter II of the Working Journalists Act, after applying the provisions of the ID Act to working journalists, governs various aspects of the employment of working journalists. Section 4 creates

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

special provisions in certain cases of retrenchment. Section 5 provides for payment of gratuity. Section 5(A) of the Working Journalists Act provides for nomination by a working journalist, stating that where a nomination made in the prescribed manner purports to confer on any person the right to receive payment of the gratuity for the time being due to the working journalist, the nominee shall, on the death of the working journalist, become entitled to the gratuity and to be paid the sum due in respect thereof to the exclusion of all other persons unless the nomination is varied or cancelled in the prescribed manner. Where there are two or more nominees, it would be void if all the nominees predeceased the working journalist making the nomination. Where the nominee is a minor, it shall be lawful for the working journalist making the nomination to appoint any person in the prescribed manner to receive the gratuity in the event of his death during the minority of the nominee. Though it may appear an innocuous provision, by making this provision is notwithstanding any law including testamentary law, the legislative intent to make special provisions for working journalist is clear.

36. Under Section 6 of the Working Journalists Act, hours of work are prescribed, stating that no working journalist shall be required or allotted to work in any newspaper establishment for more than one hundred and forty-four hours during any period of four consecutive weeks, exclusive of the time for meals. Under

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

Section 7, provisions for leave are made laying down that every working journalist shall be entitled to earned leave on full wages for not less than one-eleventh of the period spent on duty, leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service. This is without prejudice to such holidays, casual leave or other kinds of leave as prescribed.

37. Elaborate provisions are also made for wages payable to the working journalists under the Working Journalists Act. Section 9 of the Act states for the purpose of fixing or revising rates of wages in respect of working journalists, the Central Government will constitute a Wage Board which shall consist of three persons representing employers, three persons representing working journalists, and four independent persons, one of whom shall be a person who is or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof. The Wage Board would then call upon newspaper establishments, working journalists and other persons interested in the fixation or revision of rates of wages of working journalists to make such representations. The Board shall then take into account the representations and, after examining the material placed before it, make such recommendations as it thinks fit to the Central Government for the fixation or revision of rates of wages in respect of working journalists. The Board shall have regard to the cost of living, the prevalent rates of wages for comparable

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

employment, and the circumstances relating to the newspaper industry in different regions of the country. The Wage Board may exercise all or any of the powers that an Industrial Tribunal constituted under the ID Act to adjudicate an industrial dispute. Therefore, all aspects, such as work hours, leave wages, and gratuity, etc. are covered under the Working Journalists Act. This clearly shows an emphasis on the special status of the working journalists.

38. The guidance to answer the question whether working journalists have changed the status as workmen for all purposes or whether they remain an entity under the Working Journalists Act and whether the said Act is a complete Code can be found in various judicial pronouncements.

39. The leading decision on the Working Journalists Act is of the Constitution Bench rendered in the year 1959 in the case of *Express Newspapers (Pvt.) Ltd.* where certain newspaper establishments had challenged the constitutional validity of the Working Journalists Act and the legality of the decision of the Wage Board constituted therein. The Constitution Bench held that the Act did not infringe any of the fundamental rights of the Petitioners guaranteed under Article 19(I)(a), 19(I)(g), 14 and 32 of the Constitution of India. The Constitution Bench held that the functions of the Wage Board constituted under Section 8 of the Act were not judicial or quasi-judicial but the fixation of rates of wages

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

by the Wage Board by the Legislative Act.The Constitution Bench in the case of *Express Newspapers (Private) Ltd.* has explained the role of a working journalist and that the Working Journalists Act as a Code.

40. On this aspect, the report of Press Commission, which preceded the enactment of the Working Journalists Act, also requires to be noted. The Hon'ble Supreme Court in the case of *Express Newspaper (P) Ltd.* has referred to the observations of the Press Commission, which are as follows:-

> *"212. We have already set out what the Press Commission had to say in regard to the position of the working journalists in our country. A further passage from the Report may also be quoted in this context :*
>
> *" It is essential to realise in this connection that the work of a journalist demands a high degree of general education and some kind of specialised training. Newspapers are a vital instrument for the education of the masses and it is their business to protect the rights of the people, to reflect and guide public opinion and to criticise the wrong done by any individual or organisation however high placed. Thy thus form an essential adjunct to democracy. The profession must, therefore, be manned by men of high intellectual and moral qualities. The journalists are in a sense creative artists and the public rightly or wrongly, expects from them a general omniscience and a capacity to express opinion on any topic that may arise under the sun. Apart from the nature of their work the conditions under which that work is to be performed, are peculiar*

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

to this profession. Journalists have to work at very high pressure and as most of the papers come out in the morning, the journalists are required to work late in the night and all the news that breaks before that hour has got to find its place in that edition. Journalists thus becomes a highly specialized job and to handle it adequately a person should be well-read, have the ability to size up a situation and to arrive quickly at the correct conclusion, and have the capacity to stand the stress and strain of the work involved. His work cannot be measured, as in other industries, by the quantity of the output, for the quality of work is an essential element in measuring the capacity of the journalists. Moreover, insecurity of tenure is a peculiar feature of this profession. This is not to say that no insecurity exists in other professions but circumstances may arise in connection with profession of journalism which may lead to unemployment in this profession. Their security depends to some extent on the whims and caprices of the proprietors. We have come across cases where a change in the ownership of the paper or a change in the editorial policy of the paper has resulted in a considerable change in the editorial staff. In the case of other industries a change in the proprietorship does not normally entail a change in the staff. But as the essential purpose of a newspaper is not only to give news but to educate and guide public opinion, a change in the proprietorship or in the editorial policy of the paper may result and in some cases has resulted in a wholesale change of the staff on the editorial side. These circumstances, which are peculiar to journalism, must be borne in mind in framing any scheme for improvement of the conditions of working journalists.

213. These were the considerations which weighed with the Press Commission in recommending the working

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

journalists for special treatment as compared with the other employees of newspaper establishments in the matter of amelioration of their conditions of service.

215. …. The working journalists are thus a group by themselves and could be classified as such apart from the other employees of newspaper establishments and if the legislature embarked upon a legislation for the purpose of ameliorating their conditions of service there was nothing discriminatory about it. They could be singled out thus for preferential treatment against the other employees of newspaper establishments. A classification of this type could not come within the ban of Article 14. The only thing which is prohibited under this Article is that persons belonging to a particular group or class should not be treated differently as amongst themselves and no such charge could be levelled against this piece of legislation. If this group of working journalists was specially treated in this manner there is no scope for the objection that that group had a special legislation enacted for its benefit or that a special machinery was created, for fixing the rates of its wages different from the machinery employed for other workmen under the Industrial Disputes Act, 1947. The payment of retrenchment compensation and gratuities, the rgulation of their hours of work and the fixation of the ratesd of their wages as compared with those of other workmen in the newspaper establishments could also be enacted without any such disability and the machinery for fixing their rates of wages by way of constituting a Wage Board for the purpose could be similarly devised. There was no industrial dispute as such which had arisen or was apprehended to arise as between the employers and the working journalists in general, though it could have possibly arisen as between the employers in a particular newspaper establishment and its own working

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

journalists. What was contemplated by the provisions of the impugned Act, however, was a general fixation of rates of wages of working journalists which would ameliorate the conditions of their service and the constitution of a Wage Board for this purpose was one of the established modes of achieving that object. If, therefore, such a machinery was devised for their benefit, there was nothing objectionable in it and there was no discrimination as between the working journalists and the other employees of newspaper establishments in that behalf.

217. … Even considering the Act as a measure of social welfare legislation the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be challenged. In our opinion, both the conditions of permissible classification were fulfilled in the present case. The classification was based on an intelligible differentia which distinguished the working journalists from other employees of newspaper establishments and that differentia had a rational relation to the object sought to be achieved viz. the amelioration of the conditions of service of working journalists."

(emphasis supplied)

The underlined portion would clearly indicate the rationale of

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

creating a special code and status for the working journalists.

41. In the case of *Express Publication (Madurai) Ltd. v/s. Union of India*[14] on the status of the working journalists and the Act the Hon'ble Supreme Court observed thus:-

> *31. This Court notices that the journalists are but the vocal organs and the necessary agencies for the exercise of the right of free speech and expression and any legislation directed towards the amelioration of their conditions of service must necessarily affect the newspaper establishments and have its repercussions on the freedom of press. The impugned Act can, therefore, be legitimately characterised as a measure which affects the press and if the intention or the proximate effect and operation of the Act was such as to bring it within the mischief of Article 19(1)(a), it would certainly be liable to be struck down. The real difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned Act is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners. The question of violation of right of freedom of speech and expression as guaranteed under Article 19(1)(a) in the present case on account of additional burden as a result of the impugned provision does not arise.*
>
> *34. In the light of the aforesaid principles, in Express Newspaper the Court considered whether the Act impugned therein violated the fundamental right guaranteed under Article 14. It was observed that in*

14 (2004) 11 SCC 526

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

framing the Scheme, various circumstances peculiar to the press had to be taken into consideration. These considerations weighed with the Press Commission in recommending special treatment for working journalists in the matter of amelioration of their conditions of service. The position as prevailing in other countries was also noticed. In a nutshell, the working journalists were held as a group by themselves and could be classified a such. If the legislature embarked upon a legislation for the purpose of ameliorating their conditions of service, there was nothing discriminatory about it. They could be singled out for preferential treatment. It was opined that classification of this type could not come within the ban of Article 14. Considering the position in regard to the alleged discrimination between press industry employers on one hand and the other industrial employers on the other, it was said that even considering the Act as a measure of social welfare legislation, the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be achieved. Both the conditions of permissible classification were fulfilled. The classification was held to be based on an intelligible differentia which had a rational relation to the object sought to be achieved viz. the amelioration of the conditions of service of working journalists. The attack on constitutionality of the Act based on Article 14 was negatived.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

35. Though the challenge in the aforesaid case was to special treatment to working journalists but what is to be seen is, that the press industry was held to be a class by itself. The definition of 'newspaper employee' takes into its fold all the employees who are employed to do any work in, or in relation to, any newspaper establishment. The decision in Express Newspaper case amply answers the main contention about the press industry having been singled out, against the petitioners. This decision also holds that to provide social welfare legislation and grant benefit, a beginning had to be made somewhere without embarking on similar legislation in relation to other industries. The fact that even after about half a century similar benefits have not been extended to the employees of any other industry, will not result in invalidation of benefits given to employees of press industry. It is not for us to decide when, if at all, to extend the benefits to others. In view of the aforesaid, we are unable to accept the contention that the impugned provision is violative of Article 14 on the ground that it singles out the newspaper industry by excluding income test only in regard to the said industry.

36. <u>Apart from the fact that it may not always be possible to grant to everyone all benefits in one go at the same time, it seems that the impugned provision and the enacting of the Working Journalists Act was part of a package deal and that probably is the reason for other newspaper establishments not challenging it and the petitioners also challenging it only after a lapse of so many years.</u> Further, Sections 2(i), 4 and Schedule I of the Provident Fund Act show how gradually the scope of the Act has been expanded by the Central Government and the Act and Scheme made applicable to various branches of industries. From whatever angle we may examine the attack on the constitutional validity based on Article 14 cannot be accepted."

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

(emphasis supplied)

Hon’ble Supreme Court thus held that the working journalists are a group by themselves and the Working Journalists Act a package deal.

42. In the case of *ABP Private Limited and Anr. v/s. Union of India & Ors.*[15] The Hon'ble Supreme Court had an occasion to consider a challenge under Article 32 of the Constitution of India by newspaper establishments seeking a declaration that the Working Journalists Act is ultra vires and it infringes fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. Their challenge was primarily to the Wage Board constituted under the Working Journalists Act. The contention was that the singling out of a specific industry, the newspaper industry, is violative of Article 14 since the Act only regulates print media and not electronic media. The Hon'ble Supreme Court negatived the challenge pointing out to the special status of the working journalists.

43. In the case of *Indian Express News Paper (Bombay) Ltd. v/s. K. Karunakaran*[16]*,* the learned Single Judge of this Court considered the issue of whether the City Civil Court had jurisdiction to entertain the suit for a declaration that the newspaper establishment was bound to recognise the plaintiff as a Chief sub-

15 (2014) 3 SCC 327
16 FA No.659/1975 decided on 21/11/1977

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

editor. The establishment contested the jurisdiction of the Civil Court. The learned Single Judge noted the provision of Section 3 of the Working Journalists Act and held that there was no dispute that the plaintiff who is a sub-editor was a working journalist within the definition of the Section 2(f) and, therefore, a newspaper employee within the meaning of Section 2(c) of the Working Journalist Act. The learned Single Judge noted that its preamble showed that Working Journalist Act was enacted to regulate the conditions of service of working journalists and other persons employed in newspaper establishments. Then the learned Single Judge pointed out that the Working Journalist Act was a complete Code. The learned Single Judge noted that Section 4 of the Act of 1955 deals with the special provisions in respect of certain cases of retrenchment. Section 5 deals with the payment of gratuity with a provision that the gratuity mentioned therein should be paid without prejudice to any benefits or rights accruing under the ID Act. The learned Single Judge then considered the provisions of Section 6 dealing with working hours; Section 8 dealing with constitution of wage board; Section 9 dealing with fixation of wages; Section 11 regarding powers and procedure of the Board. Also that the Board exercises the same powers and follow the same procedure as an Industrial Tribunal constituted under the ID Act exercises or follows for the purpose of adjudicating an industrial dispute referred to it. The learned Single Judge also noted Section 17 and concluded that

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

the Act of 1955 is a complete code in itself concerning the disputes between the employer and the working journalists and that the dispute has to be settled according to the provisions of the ID Act.

44. The Journalists sought to contend that the Working Journalists Act is not a complete Code and it only makes provisions for other Acts for working journalists, such as the ID Act and no independent machinery for the implementation of wages under the Wage Board. It was contended that no industrial dispute could be decided by the Wage Board as held by the Supreme Court in the case of *Awaz Prakashan (P) Ltd. v/s. Pramod Kumar Pujari*[17]. However, of the judicial pronouncements clearly indicate that the special machinery under the Working Journalists Act and the special status of the working journalists.

45. The Division Bench of the Orissa High Court in the case of *Pratap Chandra Mohanty v. General Manager, United News of India*[18], considered the question whether the provisions of the ID Act would apply to newspaper employees other than working journalists. In that context, the Division Bench observed as follows:

> *"11. We have duly considered the aforesaid submission of Sri Mohanty and, according to us, it would be difficult to say that the benefit of the Industrial Dispute Act would not be available to newspaper employees other than working journalists even if they be workmen within the*

17 (2003) 6 SCC 104
18 1993 LAB.I.C. 919

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

meaning of that Act. As to S. 3(1) of the Working Journalist Act, we would say that the provision in that section making the Industrial Disputes, Act applicable to working journalists cannot be taken to be that the said Act would not apply to other newspaper employees. S. 3(1) might have been enacted to make it abundantly clear that the Industrial Disputes Act would apply to working journalists even if they may not satisfy the definition of "workman" as given in the Industrial Disputes Act. It is worth pointing out in this connection that a working journalist as defined in Section. 2(f) of the Working Journalists Act may not be a "workman" if the definition of that expression as given in the Industrial Disputes Act were to apply to him. The Legislature, however, wanted the benefits of the Industrial Disputes Act to be made available to working journalists and it is perhaps because of this that S. 3(1) was inserted in the Act. This apart, reference to S. 3(1) shows that certain modifications were made in the provisions of the Industrial Disputes Act in their application to working journalists. We do not think if we would be justified in denying the benefits of a statute as important as the Industrial Disputes Act to other categories of newspaper employees, if otherwise they be workmen within the meaning of that Act, because of what has been provided in S. 3(1) of the Working Journalists Act."

(emphasis supplied)

Thus, the observation of the Division Bench of Orissa High Court would suggest that the Division Bench noted the distinction between the working journalist and workmen and that the two remain distinct.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

46. The learned Single Judge of the Delhi High Court in the case of *The Management of M/s. Statesman Ltd. v. Lt. Governor, Delhi*[19], considered a writ petition filed by the Management against the award of the Industrial Tribunal on the complaint made by the working journalists raising an industrial dispute. The learned Single Judge observed that the question is not whether working journalists are workmen as such but whether they rank with them for the benefits of the ID Act. The learned Single Judge observed thus:

> *"5. The question raised is whether respondent 3 is a workman within the definition laid down by the Industrial Disputes Act. Section 2(s) of the Industrial Disputes Act defines workman as any person employed in any industry to do any skilled, unskilled, manual, supervisory, technical or clerical work. This expressly excludes managerial or administrative officers and naturally would not apply to literary or intellectual workers. In case Mitra Parkashan, Ltd. v. Brahma Dutt Vidyarthi [(1956) 10 F.J.R. 505], sub-editor of a story magazine was considered to be not included in the definition of workman. The answer does not turn merely on the definition of workman. The Working Journalists (Industrial Disputes) Act 1 of 1955 was passed on 12 March 1955. The objects of the Act as given in the Objects and Reasons are:*
>
> > *"One of the matters referred to the Press Commission was the settlement of disputes affecting working journalists. The Press Commission examined the position in the light of judicial pronouncements and found that working journalists did not come within the scope of the Industrial Disputes Act."*
>
> *The Commission, however, considered it essential that*

19 1975 LAB. I.C. 543

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

they should be entitled to the benefits of the procedure for the investigation, and settlement of disputes envisaged in that Act and the Bill was designed to achieve the same object by extending the provisions of Industrial Disputes Act. The provisions of the Act have given the definition of the working journalist as employed in, or in relation to, any establishment for the production or publication of a newspaper or in, or in relation to, any news agency.

Section 3 of this Act reads;

> *"The provisions of Industrial Disputes Act, 1947, shall apply to or in relation to, working journalists as they apply to, or in relation to workmen within the meaning of that Act."*

This Act was repealed by the Working Journalists (Conditions of Service and Miscellaneous Provisions Act (45 of 1955). Section 3 of this Act has maintained the provisions of S. 3 of Act 1 of 1955. The result is that by a fiction of law, the provisions of Industrial Disputes Act have been extended to and applied to, or in relation to the working journalists, in the same manner and to the same extent as they apply to, or in relation to, workman defined in Industrial Disputes Act. Consequently the working journalists are fully entitled to take advantage of the provisions of the Industrial Disputes Act like any other workman without their being labelled workman as such. The modification of the Industrial Disputes Act in its application to working journalists is indicated by Sub-sec. (2) of S. 3 and other provisions of the Act but subject to them the Industrial Disputes Act mutatis mutandis applies to the working journalists. It is, therefore, not necessary to decide whether they are really workmen as such but they do rank with them for the benefits of the Act. The preliminary issue (1) decided by the Tribunal is, therefore, not open to challenge."

(emphasis supplied)

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

The learned Single Judge concluded that the Working Journalists Act confers a different status on the working journalists who are entitled to take advantage of the ID Act like any other workmen, without they being labeled as workman as such.

47. In the case of *H.R. Adyanthaya and Ors. v/s. Sandoz (India) Pvt. Ltd. and Ors.*[20] the question that fell for consideration by the Constitution Bench was whether sales representatives were workmen. This decision is of importance because it refers to the working journalists also. The Constitution Bench, after referring to the decisions on the subject, observed thus:-

> *"8. All that remains, therefore, is C.A. No. 818 of 1992 where the dispute arose out of transfers of the employees concerned effected on 16th February, 1988. The complaint was made to the industrial Court under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (the 'Maharashtra Act'). There is no doubt that in view of Section 3(18) of the Maharashtra Act, the definition of "workman" under that Act would be the same as under the ID Act. The definition of "workman" under the ID Act will obviously not cover the sales promotion employee within the meaning of SPE Act. It was contended on behalf of the workmen that since the ID Act was amended by insertion of the words "skilled" and "operational" and the SPE Act was amended to make all sales promotion employees, irrespective of their wages, "Workmen" w.e.f. 6th May, 1987, it should be held that the definition of "workman" under the ID Act covered the sales promotion employees. Hence the*

20 Civ. Appeal 235/83 decided on 11.08.1983

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

Maharashtra Act was applicable to the medical representatives. Reliance was also placed on the observation of this Court in Kasturi and Sons Pvt. Ltd. v. Shri N. Salivateeswaran and Anr. MANU/SC/0156/1958 : (1958)ILLJ527SC which is as follows :

> *It is true that Section 3, Sub-section (1) of the Act provides for the application of the Industrial Disputes Act, 1947, to or in relation to working journalists subject to Sub-section (2); but this provision is in substance intended to make working journalists workmen within the meaning of the main Industrial Disputes Act.*

We are afraid that these contentions are not well-placed. We have already pointed out as to why the word "skilled" would not include the kind of work done by the sales promotion employees. For the very same reason, the word "operational" would also not include the said work. To hold that everyone who is connected with any operation of manufacturing or sales is a workman would render the categorisation of the different types of work mentioned in the main part of the definition meaningless and redundant. The interpretation suggested would in effect mean that all employees of the establishment other than those expressly excepted in the definition are workmen within the meaning of the said definition. The interpretation was specifically rejected by this Court in May & Baker UWIMCO, Burmah Shell and A. Sundarambal cases (supra). Although such an interpretation was given in S.K. Verma, Delton Cables and Ciba Geigy cases (supra) the legislature impliedly did not accept the said interpretation as is evident from the fact that instead of amending the definition of "workman" on the lines interpreted in the said latter cases, the legislature added three specific categories, viz., unskilled, skilled and operational. The "unskilled" and "skilled" were divorced from "manual" and were made independent categories. If the interpretation

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

suggested was accepted by the legislature, nothing would have been easier than to amend the definition of "workman" by stating that any person employed in connection with any operation of the establishment other than those specifically excepted is a workman. It must further be remembered that the Independent categories of "unskilled" "skilled" and "operational" were added to the main part of the definition after the SPE Act was placed on the statute book. The reliance placed on the aforesaid observation in Kasturi and Sons case (supra) is, also not correct. In that case the Court was considering the question whether Section 17 of the working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 empowered the authorities specified by it to adjudicate upon the merits of the claim made by a newspaper employee against his employer under any of the provisions of the Act. Section 17 read as follows :

> *17. Recovery of money due from an employer - Where any money is due to a newspaper Employee from an employer under any of the Provisions of this Act whether by way of compensation, gratuity or wages, the newspaper employee, may without prejudice to any other mode of recovery, make an 'application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, t 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.*

While answering the question in the negative, the Court first observed that it is significant that the State Government or the specific authority mentioned in Section 17 had not been conferred with the normal powers of a court or a tribunal to hold a formal inquiry. It then proceeded to make the aforesaid

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

> *observation. It is thus clear that the use of the expression "in substance" in the said context was not so much for holding that the working journalists were workmen within the meaning of ID Act but to indicate that since Section 3(1) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act applied the provisions of the ID act to the working journalists for all other purposes, the working journalists were for the purpose workmen within the meaning of the ID Act. This is apart from the fact that the construction suggested on behalf of the workmen resting their case on the provisions of Section 6(2) of the SPE Act would be against the rules of interpretation.*
>
> *We are, therefore, of the view that the contention raised on behalf of the management in this appeal, viz., since the medical representatives are not workmen within the meaning of the Maharashtra Act the complaint made to the Industrial Court under that Act was not maintainable, has to be accepted. Hence the complaint filed by the appellant – workmen under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court."*
>
> (emphasis supplied)

The underlined portion from the passage above would show that the Constitution Bench observed that the emphasis was not on the working journalists being workmen within the ID Act but to indicate that Section 3(1) of the Working Journalist Act only applied provisions of the ID Act to the working journalists for all purposes and the working journalists were for that purpose workmen under the Industrial Disputes Act. Therefore, the emphasis was not on altering the status but on making the provisions of the ID Act

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

applicable to working journalists.

48. This legislative background and the judicial pronouncements would show that the Working Journalists Act is enacted to confer a special status on the working journalists and the disputes have to be settled according to the provisions of the ID Act. Thus, both the ID Act and the Working Journalists Act read together provide a Code governing the service conditions of the working journalists against the Management.

49. As stated earlier, there is no dispute regarding effect of the conjoint reading of the ID Act and the Working Journalists Act. However, the Journalists are attempting to connect a third enactment, the MRTU & PULP Act, to contend that since employee defined under the MRTU & PULP Act refers to workmen, it must include working journalists. The Management points out that this would stretch a legal fiction far beyond what is contemplated by the conjoint reading of the Working Journalist Act and the ID Act. Since it is argued by the Journalists that the intent of the legislature has been taken into consideration, it has to be noted that in the definition of employee under the MRTU and PULP Act, the Maharashtra legislature by an amendment of the year 1999, has specifically included sales promotion employees as defined in Section 2(d) of Sales Promotion Employees Act of 1976. If the working journalists were to be included in the definition of employee under

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

the MRTU & PULP Act, there would have been a specific reference to the same, which is missing.

50. It is no doubt true that when a legal fiction is created, the purpose of legal fiction is to be seen, and once this purpose is determined, it has to be given full effect and taken to a logical end. But when legislature itself indicates the ambit, the legal fiction cannot be stretched beyond what is contemplated by the legislature. Otherwise, under the garb of taking legal fiction to the logical end, it would be possible for it to be applied endlessly across different statutes far beyond the contemplation of the legislature. The logical end of the legal fiction, therefore, is restricted only to the purpose for which the legal fiction is created. The logic is to be determined by the statute which created it. Therefore, the legal fiction of treating working journalists as workmen under Section 2(s) of the ID Act cannot be extended far beyond what is contemplated merely because extending such fiction would confer additional rights on working journalists of being treated as employee under the MRTU & PULP Act. The arguments of the Journalists are based on the consequences if fiction is not extending it to the MRTU & PULP Act. What has to be kept in mind is the purpose of creating the fiction and the scope and ambit of the Working Journalists Act and the ID Act. As we already have discussed, the purpose and find that the scope of the legal fiction is

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

limited.

51. The Journalists also sought to contend that since the Working Journalists Act is a piece of beneficial legislation and two interpretations are possible, the one favouring the employees must be preferred. Reliance is placed on the decision of *All India Reporter Karmachari Sangh and Ors. v/s. All India Reporter Limited and Ors.*[21], which arose from the application of this Act. The question before the Hon'ble Supreme Court in this case was the definition of a newspaper under the Working Journalists Act and whether it would include law reports. The High Court had held that to fall within the definition of newspaper, what is reported must be news. The Hon'ble Supreme Court in its judgment in appeal from the decision observed, referring to the definition of news, that the law reports published news about the judicial decisions. It is in this context that the observations were made that when there are two interpretations possible, one beneficial should be extended to the employees. The case at hand is of legal fiction which the Journalists are attempting to extend beyond its intended meaning. Therefore, there is no question of invoking the principle regarding choosing the interpretation which is more beneficial.

52. The reliance of the Journalists on the decisions of *M/s. Girdharilal & Sons v/s. Balbir Nath Mathur & Ors.* [22] and *Excel*

21 1988 (Supp) SCC 472
22 (1986) 2 SCC 237

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

Crop Care Ltd. v/s. Competition Commissioner of India & Anr.[23] that the intention of the legislature must be seen and absurdity would be avoided, is in fact, against the working journalists. This is so because according to us, the intention of the legislature is to keep the legal fiction restricted.

53. Though various shades of the arguments have been advanced by working journalists based on the consequences, assumptions, and legal fictions, they must be considered within the ambit of the statutory provisions. The position is established by the judicial pronouncements that the working journalists form a class by themselves. The special status of the working journalists does not change to bypass this established position. Therefore, the Working Journalist Act is intended as a package deal for working journalists with special rights and privileges, and the reading of Section 3 of the Working Journalist Act would show that their status does not undergo a change. The working journalists are advancing various arguments to expand their rights while retaining their special privileges intact by interpretive process, which is rightly objected to by the Management.

54. The next limb of arguments of the Journalists is based on the amendment as per Section 20(2) of the MRTU & PULP Act and the Schedule appended to the said Act.

23 (2017) 8 SCC 47

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

55. Under Section 20 of the MRTU & PULP Act, the rights of the recognised union have been provided for, and Section 20(2) regulates the contingency where there is a recognised union for any undertaking. Section 20(2) states that where there is a recognised Union for any undertaking that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under Section 3 of the ID Act. Section 20(b) states that no employee shall be allowed to appear or act or be allowed to be represented in certain proceedings under the ID Act except through the recognised union; and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking. It is then stated under this Section that the provisions of the ID Act shall stand amended in the manner to the extent specified in Schedule I. Schedule I as referred to under Section 20(2) which reads thus:-

> *"1. In section 3, to sub-section (1), the following proviso shall be added, namely :-*
> *"Provided that, where there is a recognised union for any undertaking under any law for the time being in force, then the recognized union shall appoint its nominees to represent the workmen who are engaged in such undertaking.*
> *Explanation- In the proviso to sub-section (1), the expression "undertaking" includes an establishment."*
>
> *2. In section 10, in sub-section (2), after 'appropriate Government' insert "on such application being made by*

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

a union recognised for any undertaking under any law for the time being in force, and in any other case."

3. In Section 10-A -
(a) in sub-section (1) after the words "workmen" the words "and where under any law for the time being in force, there is a recognised union in respect of any undertaking, the employer and sub recognised union" shall be inserted;
(b) to sub-section (3-A), the following proviso shall be added, namely; "Provided that, nothing in this sub-section shall apply, where a dispute has been referred to arbitration in pursuance of an agreement between the employer and the recognised union under sub-section (1) of this section;"
(c) in sub-section (4-A), after the words, brackets, figure and letter "sub-section (3-A)" the words "or where there is a recognised union for any undertaking under any law for the time being in force and an industrial dispute has been referred to arbitration" shall be inserted.

4. In section 18,-
(a) to sub-section (1) the following proviso shall be added, namely :-
"Provided that, where there is a recognised union for any undertaking under any law for the time being in force, then such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee) shall be arrived at between the employer, and the recognised union only; and such agreement shall be binding on all persons referred to in clause (c), and clauses (d), of sub-section (3) of this section."
(b) in sub-section (3), after the word, figure and letter "section 10A" the words "or an arbitration award in a case where there is a recognised union for any undertaking under any law for the time being in force"

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

shall be inserted.

5. In section 19, -
(a) after sub-section (2), the following sub-section shall be added, namely:-
"(2A) Notwithstanding anything contained in this section, where a union has been recognised under any law for the time being in force, or where any other union is recognised in its place under such law, then notwithstanding anything contained in sub-section (2), it shall be lawful to any such recognised union to terminate the settlement after giving two months' written notice to the employer in that behalf,"
(b) to sub-section (7), the following shall be added, namely :-
"and where there is a recognised union for any undertaking under any law for the time being in force, by such recognised union."

6. In section 36, to sub-section (1), the following shall be added,
namely:-
"Provided that, where there is a recognised union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except by such recognised union."

56. The Journalists advanced elaborate arguments on the effect of this amendment and how, if the interpretation of the Management is to be accepted, the amendment to the ID Act would be nullified. The Journalists argued that these amendments to the ID

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

Act are also for the working journalists in the collective bargaining and recognised unions as sole bargaining agents aligning them with the procedures outlined in the ID Act. They argue that the recognition of unions is crucial under the MRTU & PULP Act, since it gives exclusive power to recognised unions and ensuring that the rights and conditions of working journalists are protected, such as the mandatory 14-day notice before lockouts or strikes. It is argued that it would be illogical to assume that the legislature did not intend for this notice to apply to working journalists.

57. It is sought to be contended by the Journalist that if the ID Act is made applicable to the working journalists only for a forum provided by the legislation, then even a changed forum should be made available. It is stated that the changed forum to approach the Court and also gives right of recognised union and for collective bargaining. The working journalists can represent the works committee, and they have the right to make a settlement with the management, and all these rights would be taken away. The working journalists seek to demonstrate from a chart which rights would be lost.

58. The Management contends that there is no merit in the argument of the Journalists based on the amendment to the MRTU & PULP Act. They contend that as regards the collective bargaining, the Working Journalists Act is a code by itself. Recognized unions

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

are not necessary for the working journalists since their benefits are already outlined in the Act, distinguishing them from workmen who may require unions to raise demands. The Management contends that there are no such restrictions on the workmen within the meaning of Section 2 (s) of the ID Act. It is further submitted that the nature of work as outlined in the definition of working journalist arises out of the classification of working journalists into various categories as made. It is submitted that the issue of the classification of working journalists and their wage structure is covered by the provisions of the Working Journalist Act of 1955, across the country. Working journalist enjoys certain benefits and it is submitted that if the working journalist were to be read with the ID Act as merely a workman within the meaning of Section 2 (s) of the ID Act, then it would bring about unharmonious reading of the Working Journalists Act and the ID Act and collective bargaining with working journalists and workmen at the same time in a newspaper establishment may disrupt the industrial peace.

59. We find that adequate provisions akin to collective bargaining are provided to the working journalists. Under Section 9, the Working Journalists Act makes provisions for wage boards. The composition of the Wage Board, is of three representatives of the working journalist and four independent persons. Therefore, the representatives of the establishment and the working journalists are in the same position with independent persons, one of them could

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

be judge of the High Court or Supreme Court. Therefore, for wages, machinery like collective bargaining is already provided to the working journalists.

60. Apart from wages, the Rules framed under the Working Journalists Act titled Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957 also need to be noted, which cover various aspects. Chapter II deals with the payment of gratuity, nominations, and deduction from gratuity. Under Chapter III, hours of work are specified. Rule 7 specifies Special provisions regarding editors. Under Rule 8, normal working days are provided, stating that the number of hours which shall constitute a normal working day for a working journalist, exclusive of the time for meals, shall not exceed six hours per day in the case of a day shift and five and half hours per day in the case of a night shift and no working journalist shall ordinarily be required or allowed to work for longer than the number of hours constituting a normal working day. Rule 9 specifies the interval for rest, stating that subject to such agreement as may be arrived at between a newspaper establishment and working journalists employed in that establishment, the periods of work for working journalists shall be so fixed that no working journalist shall work for more than four hours in the case of day shift and three hours in the case of night shift before he had an interval of rest, in the case of day shift for one hour, and in the case of night shift for half an hour.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

61. Under Rule 10 of Rules of 1957, compensation for overtime work is provided stating that when a working journalist works for more than six hours on any day in the case of a day shift and more than five and half hours in the case of a night shift, he shall, in respect of that overtime work, be compensated in the form of hours of rest equal in number to the hours for which he has worked overtime. Rule 11 provides for conditions governing night shifts, stating that no working journalist shall be employed on a night shift continuously for more than one week at a time or for more than one week in any period of fourteen days, provided that, subject to the previous approval of the State Labour Commissioner or any authority appointed by the State Government in this behalf, the limit prescribed in this Rule may be exceeded where special circumstances so require. Under Rule 12, an interval preceding a change of shift is also provided for stating that in the case of a change of shift from night shift to day shift or vice versa, there shall be an interval of not less than twenty-four consecutive hours between the two shifts and in the case of a change from one day shift to another day shift or from one night shift to another night shift there shall be an interval of not less than twelve consecutive hours, provided that no such interval may be allowed if such interval either coincides with or falls within the interval enjoyed by a working journalist under sub-section (2) of Section 6 of the Act.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

62. Chapter IV of the Rules of 1957 specifies holidays available. It states that the working journalist shall be entitled to ten holidays in a calendar year. Compensatory holidays are provided to specify the details thereof. Wages for holidays are provided. Wages for a weekly day of rest are also provided. Chapter V deals with the various types of leaves and the procedure. This includes earned leave, wages during earned leave, cash compensation for earned leave not availed of, medical, maternity, quarantine, extraordinary, study, and casual leave.

63. The Rules of 1957 read with the Working Journalist Act thus include exhaustive provisions exclusively governing the working journalists. There is therefore already an elaborate mechanism governing the services of the working journalists.

64. Journalists contend that as per the MRTU & PULP Act the Amendment to ID Act confers rights on the working journalist regarding collective bargaining and since the working journalist fall under the definition of workmen under the ID Act, it could have never been the intention of the legislature that these rights are to be taken away. We find no merit in this contention. In an establishment generally there would be workmen and non-workmen. Collective bargaining by a union can bind the workmen/employees, not the others. Therefore, the Management rightly points out that employees/workmen, excluding the working journalists, are free to

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

negotiate and represent themselves. Once the working journalists are placed in a different class, they cannot make grievances regarding the same. The Courts in the above cited decisions has recognised this separate status and has confirmed their special benefits on that basis. Merely because working journalists would not form a trade union under the MRTU & PULP Act does not mean that something not contemplated in the statute should be incorporated into it. On the other hand, if argument of the working journalists is accepted, it would bring anomalous situation. For instance , if a settlement takes place between management and working journalists as per the provisions of the MRTU & PULP Act then all other employees/workmen from the establishment could demand the same benefits as are available to the working journalists under the Working Journalists Act proceeding on the basis that there is no difference between them and working journalists all being workmen. This could lead to breach of industrial peace. Therefore, accordingly us, harmoniously read, the legislative intent is clear that as far as working journalists are concerned, their rights and remedies remain the same, and the Amendment to the ID Act under the MRTU & PULP Act provides additional benefits for the other employees/workmen.

65. Various safeguards are available to working journalists under the Working Journalists Act and the Rules of 1957, and all these rights are statutorily guaranteed. The working journalists enjoy

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

a specific status under the Working Journalists Act and the ID Act, which, as observed earlier, is a package deal. The contention of the working journalists based on the consequences of the Amendment to the ID Act as per the MRTU & PULP Act is an argument in reverse. The primary position is that the working journalists remain a special class governed by the service conditions prescribed under the Working Journalists Act and the Rules of 1957. Since the Working Journalists Act does not provide for machinery for dispute resolution, the same can be availed of under the ID Act. The purpose of the MRTU & PULP Act is to provide a framework for regulating the rights and obligations of a specific class. MRTU & PULP Act creates rights and liabilities and has provisions for enforcing such rights and obligations. This Act ensures that the recognition granted to unions under the MRTU & PULP Act is not defeated. The amendments made to the ID Act is in furtherance of the provisions of the MRTU & PULP Act but not contrary to it.

66. Though arguments based on the principles of legislation by reference and by incorporation are sought to be advanced by the Journalists, the basis premise is that the special status of the working journalists and their package does not change. If there is no difference between the working journalist and workmen then it cannot be that the working journalist retain special privileges while they are denied to other workmen including non-working journalist. By advancing various technical arguments, what the Journalist are

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

attempting to do is to acquire rights available to other workmen on the basis they are similarly situated without relinquishing their special privilege, which are not available to other workmen. The scheme of the governing legislations do not permit the same.

67. Journalists in the alternative contended that the definition of workman under Section 2(s) of the ID Act depends on the primary nature of the work and that working journalists, with varying roles across establishments can fall within the definition. The complaint of unfair labour practices under the MRTU & PULP Act is maintainable as long as working journalist claims to be an employee within the MRTU & PULP Act. The complaint filed under the MRTU & PULP Act cannot be dismissed at the threshold as the complainant can demonstrate that the complainant falls within the definition of a workman under Section 2(s) of the ID Act, and the inquiry will have to be done on a case-to-case basis. It is argued that the definition of the workmen as earlier stood under Section 2(s) of the ID Act only included unskilled and manual clerical work, thereafter, the definition has been amended to include persons who do unskilled, skilled, technical, operational, and clerical work. By further Amendment, the definition of workmen was expanded. The Journalist also contended that in the case of *Burma Shell Oil Storage and Distribution Co. of India Ltd. vs. The Management Staff Association*[24] the Supreme Court has held that the Court has to

24 AIR 1971 SC 922

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

ascertain the main work of the one claiming to be a workman, and this is a matter of evidence; therefore, the complaint cannot be dismissed at the threshold. Reliance is also placed on the decision in the case of *Wang v/s. Chinese Daily News*[25] to contend that there could be a difference between the work of a journalist in a smaller establishment and that of a larger one and there can also be a difference between creative works. The Journalists thus contend that it should be kept open to the individual working journalist to prove that the complainant falls within the definition of Section 2(s) of the ID Act to be determined by pleadings as long as the pleadings are that that the complainant is an employee within the meaning of Section 3(5) of the MRTU & PULP Act.

68. We find no merit in the above contention raised by the Journalists. We have concluded that the status of working journalists do not undergo a change and referring their special status, a limited legal fiction is created. Working Journalist do not fall within the definition of an employee under Section 3(5) of the ID Act. That being the position, the complaint filed by the working journalists in the forum provided under the MRTU & PULP Act on the premise of being an employee under Section 3(5) would not be maintainable because, as being a special class the working journalists, are not employees as defined under the MRTU & PULP Act. No question thus would arise of leading evidence as to how an individual working

25 16388 U.S. Court of Appeal

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

journalist would fall within the definition of employee as defined under the MRTU & PULP Act.

69. In essence, shorn of technicalities, working journalists constitute a distinct class with unique privileges and protections in their employment. This recognition of special status, distinct from other workmen, has been upheld based on the premise that working journalists form a separate category. The framework provided by the Working Journalists Act and Rules under it, along with the recourse offered to journalists under the Industrial Disputes Act, forms a specific arrangement. While the Working Journalists Act establishes a legal fiction equating working journalists with workmen, this fiction is limited. The status of working journalists remains distinct from that of regular workmen due to the retention of their special privileges. The contention of working journalists seeking to assert themselves as employees, thereby enabling them to file complaints of unfair labor practices and avail of collective bargaining, aims at expanding their rights while preserving their special privileges. However, this course of action will contradict the combined reading of the governing statutes. Hence, the view taken by Baldota, J. in *Shashikaran Shrivastava* which was the only definitive view and binding on the referral judge, correctly holds that working journalists cannot be considered employees under the MRTU & PULP Act.

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::

VERDICTUM.IN

70. As a result of the above discussion, we answer the Reference as follows.

71. The working journalists under Section 3 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 are not included in the definition of "employee" under Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Thus, a complaint of unfair labour practice filed by a working journalist under the MRTU and PULP Act is not maintainable. The view taken by R.P. Sondurbaldota, J. in *Shashikaran Shrivastava* lays down the correct position of law.

72. The Writ Petitions be placed before the learned Single Judge for passing appropriate orders.

SANDEEP V. MARNE, J. ***NITIN JAMDAR, J.***

::: Uploaded on - 04/03/2024 ::: Downloaded on - 08/03/2024 15:58:48 :::