JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

I.C.A. NO.295 OF 2021

DAILY KHABRAIN.

Versus

ABDUL WAHEED JAMAL, ETC.

Appellant by	**:**	**Ms. Shaista Altaf, Advocate.**
Respondent by	**:**	**Syed Ishteyaque Mustafa Bukhary, Advocate.**
Date of hearing	**:**	**08.02.2022. & 01.03.2022.**

SAMAN RAFAT IMTIAZ, J. Through this Intra Court Appeal, the Appellant (Daily Khabrain) has challenged the Judgment dated 04.05.2021 ("**Impugned Judgment**") whereby the learned Single Judge-in-Chambers has dismissed the Writ Petition No.2707 of 2020 filed by the Appellant.

2. Succinctly, the facts of the case are that Respondent No.1 was appointed as Managing Editor by the Appellant in the year 1995. Initially, the Respondent No.1 was earning a salary of Rs.9,000/- per month, which increased periodically during the subsistence of his employment and finally he was receiving salary of Rs.60,000/- per month as Resident Editor at the time of termination of his employment in February 2018.

3. The Respondent No. 1 was issued a termination letter dated 27.02.2018 ("**Termination Letter**"), wherein it was alleged that despite multiple chances afforded to the Respondent No.1, he was unable to perform efficiently in any department.

4. The Respondent No. 1 filed petition before Implementation Tribunal ("**ITNE**") constituted under Newspaper Employees (Conditions of Service) Act, 1973 ("**Newspaper Employees Act**") praying for restoration of his job with the Appellant and recovery of arrears accruing on account of difference between wages actually paid and what was due under the 7th Wage Award

which includes rent, medical, conveyance allowances, leave encashment, gratuity and old age benefits.

5. The learned ITNE after framing issues on the basis of pleadings, partially allowed the petition of Respondent No.1 vide judgment dated 14.01.2020 (**"ITNE Judgment"**) and held that Respondent No.1 was entitled to receive salaries according to the 7th Wage Award, which according to the available record he had been receiving during his service with the Appellant. However, the Respondent No. 1 was held entitled to gratuity and three months' salary as he was not served with notice for termination. As such, the Appellant was directed to pay to Respondent No.1 Rs. 1,380,000/- as gratuity and Rs. 180,000/- in lieu of notice aggregating to Rs.1560,000/-.

6. Feeling aggrieved by the ITNE Judgment, the Appellant preferred a writ petition before this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 impugning the ITNE Judgment on the grounds that the ITNE lacked jurisdiction as application under Section 12(A) of the Newspaper Employees Act can only be filed for implementation of the wage board award and for no other claims whereas Respondent No. 1 was a contractual employee receiving salary according to special scale, which was more than the wages fixed under the 7th Wage Board Award; and that the Respondent No. 1's employment was terminated on account of misconduct; as such prayed for setting aside of the impugned ITNE Judgment.

7. The learned Single Judge-in-Chambers dismissed the writ petition vide judgment dated 04.05.2021 ("**Impugned Judgment**") on the grounds that the learned ITNE did not lack jurisdiction as the Respondent No. 1's grievance was with regard to termination of his employment and non-payment of allowances and benefits according to the 7th Wage Award and that the appointment letter issued to the Respondent No. 1 does not suggest that he was appointed on contract basis for a particular period, hence the instant appeal.

8. Learned counsel for the Appellant, *inter alia*, contended that the Impugned Judgment is against the law and facts; that the learned Single

Judge-in-Chambers erred by ignoring all the grounds taken by the Appellant; that proceedings initiated before ITNE are without jurisdiction and nullity in law as the ITNE has no jurisdiction to resolve pecuniary claims and that it has been vested with the power to the extent of implementation of the Wage Board Award; that Respondent No.1 was on contract and did not challenge his termination, therefore, is not entitled for any gratuity; that Respondent No.1 was terminated from the service for misconduct, as such, is not qualified for the benefit of gratuity under sub-section (6) of Standing Order 12 of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968; that the Respondent No. 2 could not have awarded gratuity based on salaries from 1995 till 2001 as the 7Th Wage Board Award did not cover the said entire period whereas the 6Th Wage Board Award had been superseded by the subsequent wage board award. Learned counsel for the Appellant relied on the cases reported as ***Syed Imtiaz Ali Vs. Chairman, Implementation Tribunal for Newspaper Employees (ITNE), Islamabad and others, 2019 SMCR 1034*** and ***Daily Khabrain Vs. Iqbal Mustafa, 2019 PLC (CS) 541***.

9. Conversely, learned counsel for Respondent No.1 strongly opposed the contentions of the Appellant and submitted that no show cause notice was issued to the Respondent No.1 prior to the Termination Letter, as such his termination does not constitute termination on account of misconduct. He also pointed out that contrary to the present assertions of the Petitioner, the Respondent No. 1's appointment letter refers to the wage board awards given from time to time and that the previous wage board award is included in the next wage board award. It was further submitted that concurrent judgments against the Appellant are based on a correct appreciation of the law and do not suffer from any infirmity or illegality.

10. We have heard the arguments of the learned counsel for the parties and perused the record.

11. It is noted that the Appellant is a newspaper establishment that employed Respondent No.1 vide appointment letter dated 15.06.1995. As such, the employment of the Respondent No.1 with the Appellant was governed by the provisions of the Newspaper Employees Act.

12. Some of the conditions of service of newspaper employees are covered in Sections 4,5,6,7, and 8. The provision pertaining to termination of employment is Section 4. The relevant provisions of Section 4 of the Newspaper Employees Act are reproduced herein below:

> *" **4. Termination of employment**. The services of a newspaper employee shall not be terminated by a newspaper establishment without good cause shown through a notice, in writing, of such termination-*
>
> *(a)…*
>
> *(b) …; and*
>
> *(c) **of three months, if the total period of such service is not less than three years** ;*
>
> *Provided that, if the order of appointment of the newspaper employee provides notice of a longer period, notice shall be given in accordance with the terms of such order:*
>
> ***Provided further that the services of a newspaper employee may be terminated at any time on payment of wages in lieu of the requisite notice.***" [Emphasis added].

13. Whereas, Section 9 of the Act of 1973 has conferred power upon the Federal Government to constitute a Wage Board which has been given the jurisdiction to fix the rate of wages in respect of newspaper employees. It is important to bear in mind the definition of the term "wages" as given in sub-section (h) of Section 2 of the Newspaper Employees Act therefore, it is reproduced herein below:

> *"2. In this Act, unless there is anything repugnant in the subject or context,-*
>
> .
>
> .
>
> .
>
> *(h) "wages" means wages as defined in the Payment of Wages Act, 1936 (IV of 1936), and includes any gratuity or other payment declared as wages by the Board; and…"* [Emphasis added].

14. By virtue of the definition of "wages", the powers of the Wage Board constituted under Section 9 of the Newspaper Employees Act extend over gratuity.

15. The decision of the Board regarding rate of wages is to be published pursuant to Section 11 of the Newspaper Employees Act. For the purposes of implementation of the decision under Section 11, a Tribunal may be constituted by the Federal Government under Section 12-A.

16. In addition, by virtue of Section 17 of the Newspaper Employees Act, the provisions of the West Pakistan Industrial and Commercial (Standing

Orders) Ordinance, 1968 ("Standing Orders") (subject to certain exceptions) also apply to newspaper employees as if a newspaper employee were a 'workman' within the meaning of the Standing Orders. The exceptions include Standing Order 2 and clauses (1) and (2) of Standing Order 12, which provide for, *inter alia*, notice period for termination and salary in lieu thereof. Therefore, the notice period for termination of a newspaper employee or salary in lieu thereof is governed by Section 4 of the Newspaper Employees Act.

17. The learned counsel for the Appellant has argued that the Termination Letter issued to the Respondent No. 1 by the Appellant was on account of misconduct. The manner in which termination of employment of a newspaper employee may be carried out in case of misconduct is provided in sub-section (5) of Standing Order 12 (applicable upon a newspaper employee by virtue of Section 17 of the Newspaper Employees Act), which is reproduced herein below:

> ***"12. Termination of employment.–*** *(1)*
> *(5) The services of a permanent or temporary workman shall not be terminated on the grounds of misconduct otherwise in the manner prescribed in Standing Order 15."*

18. Whereas, the relevant provisions of Standing Order 15 provide as follows:

> ***"15. Punishments.–****(4)* ***No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct*** *within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of the employer* ***and is given an opportunity to explain the circumstances alleged against him.*** *The approval of the employer shall be required in every case of dismissal and, the employer shall institute independent inquiries before dealing with charges against a workman."* [Emphasis added].

19. In short, the scheme that emerges from the above-quoted provisions is that dismissal of a newspaper employee on account of misconduct is not valid unless it is preceded with a notice, in writing and an opportunity of hearing.

20. The record does not show that any show cause notice as required was issued to the Respondent No. 1 nor any opportunity of hearing was afforded as required under the Standing Orders. Since, the procedure for dismissal on

account of misconduct was not followed as per the applicable law the termination of the Respondent No.1's employment can only be described as termination *simpliciter*.

21. Admittedly, where a newspaper employee's employment is terminated for reasons other than misconduct, he is entitled to gratuity by virtue of sub-section (6) of Standing Order 12. We have already observed that gratuity is included within the ambit of the term "wages" as per the definition provided in the Newspaper Employees Act. Therefore, the Wage Board constituted under Section 9 is empowered to fix the rate of wages including gratuity. The decision of the Wage Board is published pursuant to Section 11 of the Newspaper Employees Act. As such, gratuity falls within the domain of the ITNE, which is constituted to implement the decision of the Wage Board published under Section 11 of the Newspaper Employees Act. Thus, the ITNE Judgment to the extent of gratuity was not without jurisdiction.

22. With regard to the Petitioner's argument that the period from 1995 to 2001 was not covered under the 7th Wage Board Award, there is nothing on the record to support such contention. On the other hand, the Respondent No. 2 has claimed that the previous wage board award is included in the subsequent one. The finding of the learned ITNE in the ITNE Judgment is that the Respondent No. 1 was receiving salaries in accordance with the 7Th Wage Board Award. In view of the foregoing, we cannot hold that the ITNE Judgment was without jurisdiction as far as gratuity is concerned.

23. With regard to salary in lieu of notice, it has already been observed above that the provisions of the Standing Orders that have been excluded under Section 17 of the Newspaper Employees Act include clauses (1) and (2) of Standing Order 12. The aforementioned excluded provisions cater to notice period for termination and salary in lieu thereof. Since such provisions of the Standing Orders do not apply to newspaper employees, as observed herein above, the notice period for termination of newspaper employees or salary in lieu thereof is governed by Section 4 of the Newspaper Employees Act.

24. The Appellant relied upon the case of ***Associated Press of Pakistan Corporation Vs. Vs. Federation of Pakistan, 2010 PLC (C.S.) 1003***, in

which case another Bench of this Court concluded that the Tribunal constituted under Section 12A of the Newspaper Employees Act has a limited jurisdiction which can only be exercised to the extent of implementation of the decision of the Wage Board. Therefore, it was held that if the claim of a newspaper employee is based upon, inter alia, provisions of section 4, 5, 6, 7 and 8 of the Newspaper Employees (Conditions of Service) Act, 1973 ("**the Act of 1973**"), the employees shall invoke the jurisdiction of the NIRC.

25. Based on our review of the provisions of the Newspaper Employees Act, we are in respectful agreement with such decision. In view thereof, the grant of salary in lieu of notice, being a matter covered by Section 4 of the Newspaper Employees Act, was beyond the jurisdiction of ITNE.

26. The learned Single Judge-in-Chambers failed to appreciate the limited scope of jurisdiction of the learned ITNE as delineated under Section 12A of the Newspaper Employees Act, therefore, erroneously held that the ITNE had the jurisdiction over the Respondent No. 1's claim with regard to salary in lieu of notice.

27. In view of the foregoing discussion, this intra court appeal is **partly allowed** and the Impugned Order of the learned Single Judge-in-Chambers as well as the Impugned ITNE Judgment is set aside to the extent of salary in lieu of notice, whereas the decision to the extent of gratuity is maintained.

(MOHSIN AKHTAR KAYANI)
JUDGE

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on 7th of March, 2022.

JUDGE **JUDGE**

Approved for Reporting
Blue Slip added.