*Form No: HCJD/C-121.*
*JUDGEMENT SHEET*
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

**WRIT PETITION NO. 3661 OF 2015**

The Daily Al-Akhbar

*Vs*

Federation of Pakistan through Secretary, Ministry of Information and Broadcasting, etc.

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| PETITIONER BY: | Raja Abdul Qadeer Janjua, Advocate. |
| RESPONDENTS BY: | Ch. Tahir Mehmood, Assistant Attorney General.<br>Mr. Muhammad Arif Khawaja, Advocate |
| DATE OF HEARING**:** | 16.07.2021. |

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***BABAR SATTAR, J.***- Through this judgment, this Court will decide Writ Petitions No. 3661, 3662 and 3663 of 2015 pursuant to which the impugned order dated 30.06.2015 passed by the learned Implementation Tribunal for Newspaper Employees (***"ITNE")*** has been challenged and Writ Petitions No. 153, 154, 156 and 173 of 2016 through which impugned order dated 04.11.2015 passed by the learned ***("ITNE")*** has been challenged.

2. Through the impugned orders, respondent No.2 has allowed applications of employees and former employees of the petitioner pursuant to which they were seeking outstanding dues liable to be paid to them under the 7th Wage Board Award.

3. The legal contention of the learned counsel for the petitioner in all the petitions were common and were three fold: one

that the employees who sought implementation of the 7th Wage Board Award were not directly employed by the petitioner but were employees of MIDAS Media Services Private Limited who had outsourced its employees to the petitioner and consequently such employees did not fall within the definition of a 'Newspaper Employee' under section 2(d) of Newspaper Employees (Conditions of Service) Act, 1973 **("Act')**. And that consequently respondent No.2 was devoid of jurisdiction to adjudicate their applications and allow the same. The employees who filed their applications before respondent No.2 were not full time employees and were performing functions on a part time basis. Two, only such newspaper employees were entitled to file applications before the ITNE who at the time of filing of such applications were current employees of the newspaper establishment and that, other than respondent No.3 in W.P No. 153/2016, all other employees who filed applications before respondent No.2 were not performing any services for the petitioner and by their own account had either left their services or had been terminated at the time they filed applications before respondent No.2 and consequently the said applications could not have been entertained by respondent No.2. And three, respondent No.2 did not frame a specific issue to determine whether or not the employees who filed applications before the ITNE were employees of MIDAS Media Services or not.

4. The basic contention of the learned counsel for the petitioner in all the petitions was that as the relevant respondents were not employees of the petitioner but were employees of MIDAS Media Services, which critical fact was not taken into account by the

ITNE, and thus the decision by the ITNE suffered from a jurisdictional defect and was liable to be set aside.

4. Learned counsel for respondent No.3 contended that the issue of respondents employees being employees of MIDAS Media Services as opposed to the employees of the petitioner was raised before respondent No.2 and the petitions were decided through the impugned order dated 30.06.2015. The learned ITNE has noted in the impugned judgment that the question of employment status of the employees was adjudicated and rejected by the ITNE through detailed order dated 18.11.2014, which order was never assailed and had attained finality. In the impugned judgments dated 04.11.2015 and 30.06.2015, the learned ITNE had noted that it had recorded evidence presented by the parties and reached the conclusion in view of the evidence presented that no evidence was led on part of the petitioner to establish that the employees were in fact employed by MIDAS Media Services. The employees, on the other hand, had led evidence and presented testimony which remained unshaken establishing that they were employed by the petitioner and continued to perform services for the petitioner and consequently fell within the definition of 'Newspaper employee' under section 2(d) of the of the Act. He contended that it was after framing a proper issue as to whether the employees were full time employees of the petitioner and appreciating the evidence produced by the parties in relation to such issue that the learned ITNE gave its determination that applications of the employees were maintainable and they were entitled to compensation and other benefits as determined by the 7$^{th}$ Wage Board Award for Newspapers Employees.

5. Let us consider the basic legal contentions of the petitioner before turning to facts of each case. The first contention of the learned counsel for the petitioner that a part-time employee or an employee employed by another entity and outsourced to a newspaper establishment falls outside the definition of newspaper employees under section 2(d) of the Act is without force. Let us consider the issue of part-time employee and outsourced employee sequentially. The definition of clause 2(d) of the Act states the following:

> *"(d) "newspaper employee'' means any person employed to do any work in, or in relation to, any newspaper establishment and includes—*
>
> *(i) a whole-lime journalist, including an editor, a leader writer, news editor, feature writer, reporter, correspondent, copy tester, cartoonist, news photographer, calligraphist and proof-reader; and*
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> *(ii) a whole-time non-journalist, including a manager, clerk, stenotypist, printing engineer, linotype operator, composer, type-seller, photo studio attendant, printing worker, an accountant and an office peon;*

6. The definition of clause 2(d) was interpreted by this Court in ***Daily Khabrain Vs. Iqbal Mustafa*** ***(2019 PLC(CS) 541)*** whereby learned Division Bench of this Court held that *"the 'employee' is defined in section 2(d) of the Act and a person who is inter alia a whole-time journalist, including an editor, a leader writer, news editor, feature writer etc. The definition is not exhaustive, as the same is inclusionary. The basic concept of 'newspaper employee' is any person, employed to do any work in, or in relation to, any newspaper establishment. In this behalf, a person, who is working on contract or even writes articles by way of*

*employment in newspaper establishment or does any other work, is a 'newspaper employee'. Section 2(d)(i) and (2) of the Act list down the job positions which a person can hold being employee of newspaper establishment*."

7. As the text of section 2(d) together with the interpretation afforded by this Court in the aforementioned judgment suggests the definition of 'newspaper employee' is not exhaustive. The Act is a beneficial legislation meant to ensure that the minimum compensation determined through a Wage Board Award is afforded to employees performing duties in or in relation to a newspaper establishment. Consequently, as the language of the statute being inclusive does not oust any employee from the definition of 'newspaper employee' who is providing services in relation to a newspaper establishment, exclusion of part-time employees cannot be read into the definition in section 2(d). Such reading of section 2(d) would fall foul of the principle of *casus omissus*.

8. The argument raised by the petitioner was that the employees in question had been employed by MIDAS Media Services and their services had been outsourced and consequently they were not employees of the petitioner in its capacity as newspaper establishment. The ITNE had found after appreciation of evidence adduced by the parties that there was no evidence produced by the petitioner to establish that the employees were employed by MIDAS Media Services and the employees had successfully proved by exhibiting appointment letters, ID Cards and by giving unshaken testimony that they were in fact employed by the petitioner. The ITNE has also observed in the impugned judgments that the

ownership of the petitioner and MIDAS Media Services vested reportedly in the same natural person and merely by placing on record contracts issued to such employees by MIDAS Media Services, the petitioner could not obviate its liabilities under the Act. Section 3 of the Act which states the following:

> ***"3. Order of appointment, etc****. A newspaper establishment employing a newspaper employee shall, at the time of his appointment, transfer or promotion, furnish to him an order in writing showing the terms and conditions of his service."*

9. The legislative intent that emanates from the provisions of the Act and the language used in section 3 as well as section 2(d) appears to be to establish the floor for the compensation and benefits liable to be paid to such persons who perform services in relation to a newspaper establishment, which is why the definition of newspaper employees in section 2(d) includes a person employed to do work in newspaper establishment or in relation to a newspaper establishment. The intent of the statute is to oblige a newspaper establishment to pay persons discharging responsibilities in relation to its business a minimum compensation package and such statutory obligation cannot be circumvented by a newspaper establishment by entering into a third party contract with another entity or employment company, which is then asked to hire employees for purposes of newspaper establishment in such a manner that the provisions of the Act cannot be frustrated. In accordance with settled principles of interpretation the meaning to be given to the provisions of the Act must advance the object and purpose of the law and not to defeat them. As the language used in section 2(d) is broad enough it will apply even to such parties who have been hired by a third party that is not a newspaper establishment, in the event

that such employees have been hired to do work in relation to a newspaper establishment. There is no denial in the present case by the petitioner that the employee in question had been doing work in relation to the petitioner which is a newspaper establishment.

10. The second legal contention of the petitioner was that only such employees who were employed by a newspaper establishment at the time of filing applications before the learned ITNE could maintain a cause of action under the Act for purposes of seeking enforcement of a Wage Board Award. This contention is too without force. It was raised on the basis of dicta laid down by the learned Balochistan High Court in ***Mayor, Municipal Corporation, Quetta Vs Abdul Nabi*** (***1986 PLC 760)***. During the adjudication of ***Writ Petition No. 2221 of 2016*** titled ***Nida-i-Millat Pvt. Ltd. Vs. Liaquat Ali, etc.,*** this Court had declined to follow the dicta in the said case and held that such interpretation of section 2(d) would be absurd and leave the former employees of a newspaper establishment remediless in relation to claim for a period during which they were employed by the newspaper establishment and were liable to be compensated in accordance with the Wage Board Award. The argument was once again raised before this Court in ***Daily Khabrain Vs. Iqbal Mustafa (2019 PLC(CS) 541)*** wherein this Court has held the following:

> *"If a person leaves the job and applies to the Tribunal for recovery of wages as individual grievance, he shall be regarded as a 'newspaper employee' for the purposes of section 2(d) ibid inasmuch as at the relevant time, he was working as an employee."*

Consequently, this Court has conclusively determined that being a current employee of a newspaper establishment is not a condition precedent for the maintainability of the application before the ITNE. The relevant question is whether or not the claim in relation to a period during which the employee was a newspaper employee liable to be compensated in accordance with the Wage Board Award.

11. The contention of the learned counsel for the petitioner that the ITNE did not frame a proper issue to determine whether or not the employees were employed by MIDAS Media Services is also without merit. The relevant issue framed by the learned ITNE and reproduced in the impugned judgment as follows:

> *"Whether the petitioner is a whole time employee of the Establishment and is entitled to the arears accruing on the basis of difference between the wages actually paid and due under the 7th Wage Board Award, if so to what amount."*

It is evident from the issue framed that the question whether or not the employees in question were employees of the petitioner was appropriately framed. In the event that based on the evidence adduced, the learned ITNE came to the conclusion that the employees were not newspaper employees and were in fact employees of MIDAS Media Services, the answer to the above issue would have been the negative. The learned ITNE appraised the evidence produced by the employees as well as by the petitioner to reach a conclusion that the employees had successfully established that they were employees of the petitioner and the petitioner had failed to lead evidence to establish that such employees were either employee of MIDAS Media Services or were not employee of the petitioner.

12. Let us briefly addressed all the factual aspect of each petition.

***W.P. No. 3661 of 2015***

13. In Writ Petition No 3661/2015, respondent No.3 exhibited his appointment letter dated 26.08.1994 along with his press ID Card issued by the petitioner and the learned ITNE held that the question of employment status of respondent No.3 as not being employee of MIDAS Media Services had been determined by the ITNE by a detailed order dated 18.11.2014 which had attained finality. The legal contention raised by the petitioner had been addressed above and found wanting and no infirmity had been pointed out in the manner in which the learned ITNE appraised the evidence and applied the 7th Wage Board Award to the facts of the case. The petitioner has failed to highlight any infirmity in the impugned judgment.

***W.P. No 3662 of 2016***

14. In Writ Petition No 3662/2015, respondent No.3 exhibited his appointment letter dated 05.08.1994 issued by the petitioner and the learned ITNE held that the question of employment status of respondent No.3 as not being employee of MIDAS Media Services had been determined by the ITNE by a detailed order dated 18.11.2014 which had attained finality. The legal contention raised by the petitioner had been addressed above and found wanting and no infirmity had been pointed out in the manner in which the learned ITNE appraised the evidence and applied the 7th Wage Board Award to the facts of the case. The petitioner has failed to highlight any infirmity in the impugned judgment.

***W.P. No 3663 of 2015***

15. Respondent No.3 joined the service of the petitioner on 01.12.1992 and served the petitioner till 2008. He filed his application before the ITNE on 07.05.2012. One of the objections raised by the petitioner in relation to respondent No.3 was that his application filed before the ITNE was filed after more than three years of respondent No.3 leaving the service of the petitioner and such application was therefore time barred. The learned ITNE in the impugned judgment held that the respondent could not be non-suited on ground of latches or limitation. The facts are not disputed. Respondent No.3 admittedly quit the service of the petitioner on 28.08.2008 and filed an application seeking the enforcement of 7th Wage Board Award before respondent No.2 on 07.05.2012, which was beyond a period of three years. It is settled law that provisions of the Limitation Act, 1908 are of a mandatory nature. The issue of limitation period for purposes of seeking enforcement under the 7th Wage Board Award challenged before this Court in ***Iqbal Mustafa*** and this Court held that:

> *"18. In light of referred decisions of the Hon'ble Supreme Court of Pakistan, since no period of limitation is prescribed, either under the Act or the Rules framed thereunder, Limitation Act, 1908, would be applicable. The Tribunal is not a Court but a quasi judicial forum for implementation of Wage Board Award. To leave the proceedings before the Tribunal, without applicability of law of limitation, would be unjust and inappropriate, as that would provide license for institution of state claims. It is settled law that the effect of law of limitation is to bar remedy but the right is not extinguished. The proceedings before the Tribunal are not in the nature of a suit but are instituted through application as is borne out from the examination of Rule 16 of the Rules and the residual article for applications would apply i.e. Article 181 of*

*the 1st Schedule to the Limitation Act, 1908, where the period of limitation is three years from the date when the cause accrued."*

As the application filed by respondent No.3 before respondent No.2 was beyond the limitation period of three years, the application was not maintainable and the learned ITNE erred in law while holding that respondent No.3 must not be non-suited on ground of limitation. As respondent No.3's application before the learned ITNE was barred by limitation, the impugned judgment suffered from illegality and is liable to be set aside.

***Writ Petition No. 153 of 2016***.

16. Respondent No.3 exhibited his appointment letter dated 18.07.1994 as well ID Card issued by the petitioner. On appraisal of the evidence produced by both the parties, the learned ITNE held that respondent No. 3 was a newspaper employee. The petitioner has failed to highlight any infirmity in the impugned judgment.

***Writ Petition No. 154 of 2016***.

17. Respondent No.3 was appointed in 2008 and was terminated on 08.08.2012. Respondent No.3 exhibited his appointment letter as well as ID Card issued by the petitioner. On appraisal of the evidence produced by both the parties, the learned ITNE held that respondent No. 3 was a newspaper employee. The petitioner has failed to highlight any infirmity in the impugned judgment.

***Writ Petition No. 156 of 2016***.

19. Respondent No.3 exhibited his appointment letter dated 01.07.1996 as well as ID Card issued by the petitioner. On appraisal

of the evidence produced by both the parties, the learned ITNE held that respondent No. 3 was a newspaper employee. The petitioner has failed to highlight any infirmity in the impugned judgment.

***Writ Petition No. 173 of 2016.***

20. Respondent No.3 joined services of the petitioner on 25.02.2006 and resigned on 03.04.2010. He rejoined the petitioner on 15.08.2011 and again left the petitioner establishment on 07.07.2012. On appraisal of the evidence produced by both the parties, the learned ITNE held that respondent No. 3 was a newspaper employee. The petitioner has failed to highlight any infirmity in the impugned judgment.

20. For the aforesaid reasons, Writ Petition No. 3663 of 2015 is **allowed** and the impugned order dated 30.06.2015 passed by respondent No.2 is set aside. Writ Petitions No. 3661 and 3662 of 2015, and 153, 154, 156 and 173 of 2016 are **dismissed.**

(BABAR SATTAR)
JUDGE

Announced in the open Court on 13.08.2021.

JUDGE

Saeed.