JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3755 of 2016
Nida Investments & Printing Corporation (Pvt.) Limited
Versus
Ikhlaq Ahmed and others

Date of Hearing:	**23.10.2017**
Petitioner by:	**Syed Safeer Hussain Shah, Advocate,**
Respondents by:	**M/s Nadeem Zaman Qureshi, and Muhammad Aurangzeb Khan, Advocates for respondent No.1.**

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner Nida Investments and Printing Corporation (Private) Limited, impugns the judgment dated 21.03.2016, passed by the Chairman, Implementation Tribunal for Newspaper Employees ("I.T.N.E.") (respondent No.2), whereby application for the payment of wages etc. under the 7th Wage Board Award, filed by Ikhlaq Ahmed (respondent No.1), was allowed, and the petitioner was directed to pay Rs.12,49,434/- to respondent No.1 within a period of one month.

2. Learned counsel for the petitioner submitted that respondent No.2 did not have the jurisdiction to entertain respondent No.1's claim, because respondent No.1 did not fall within the meaning of a "newspaper employee" as defined in Section 2(d) of the Newspaper Employees (Conditions of Service) Act, 1973; that respondent No.1 could not be considered as a "newspaper employee" because he had severed his ties with the petitioner on 06.02.2012; that the provisions of Newspaper Employees (Conditions of Service) Act, 1973, do not apply to former or retired employees of any newspaper; that respondent No.1 had filed his application before respondent No.2 with a delay of more than three years after he severed his ties with the petitioner; that respondent No.1's application before respondent No.2 was time barred and should have been dismissed as such; that respondent No.1 having received an amount of Rs.4,31,990/- as final settlement of his dues could not invoke the jurisdiction of respondent No.2 for further payment. Learned counsel for the

petitioner prayed for the writ petition to be allowed, and for the impugned judgment dated 21.03.2016, to be set-aside.

3. On the other hand, learned counsel for respondent No.1 submitted that the receipt of Rs.4,31,990/- did not preclude him from claiming the arrears of wages etc. payable to him under the 7th Wage Board Award which was announced on 01.07.2000; that the petitioner had not implemented the 7th Wage Board Award because the same had been challenged before the superior Courts; that the said payment of Rs.4,31,990/- was made to respondent No.1 under the 6th Wage Board Award and not under the 7th Wage Board Award, because when the said payment was made, the petitioner had not implemented the 7th Wage Board Award.

4. Furthermore, it was submitted that there is no provision in the Newspaper Employees (Conditions of Service) Act, 1973, requiring newspaper employees to file a petition before the I.T.N.E. for the implementation of a Wage Board Award; that since the petitioner did not make payment to respondent No.1 in accordance with 7th Wage Board Award, respondent No.1's cause of action against the petitioner was continuous and recurring; and that there is no limitation period provided in the Rules for filing a petition before the Implementation Tribunal against a newspaper for the recovery of dues in accordance with the Wage Board Award. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed. In making his submission, the learned counsel for respondent No.1 placed reliance on the law laid down in the judgments reported as *1995 PLC 372 and PLD 1967 Dacca 778*.

5. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

6. An application was filed by respondent No.1 before respondent No.2 praying for the payment of arrears of wages etc. amounting to Rs.65,38,541.42 in accordance with his entitlement under the 7th Wage Board Award announced in July, 2000. The petitioner contested the said application by filling a written reply.

In the said reply, the position taken by the petitioner was that respondent No.1 was an employee of NIPCO Pvt. Limited and had resigned on 06.02.2012; that respondent No.1 had collected all his service dues and benefits amounting to Rs.4,31,990/- without any objection; and that respondent No.1 had filed his claim just to malign the fair name of the petitioner's management. From the divergent stance of the contesting parties, respondent No.2 framed the following issues:-

1) ***Whether the petitioner collected all his dues amounting to Rs.431990/- at the time of resignation and as such the application is not maintainable? OPR***
2) ***Whether the petitioner is entitled to recover the arrears accruing due to difference between the wages actually paid and due under the 7th Wage Board Award, if so, to what amount? OPA***
3) ***Relief.***

7. Respondent No.1 entered in the witness box and submitted his affidavit-in-evidence. Respondent No.1 was subjected to rigorous cross-examination by the petitioner's counsel. Vide the impugned judgment dated 21.03.2016, respondent No.2 found respondent No.1 entitled to the payment of Rs.12,49,434/- as arrears of wages and gratuity. The said judgment dated 21.03.2016 has been impugned by the petitioner in the instant writ petition.

8. The question as to whether the jurisdiction of the I.T.N.E. can be invoked only by a serving employee of a newspaper, and not by a retired employee was considered and answered by this Court in the judgment dated 09.11.2016, passed in writ petition No.2221/2016 tiled as "Nida-i-Millat Pvt. Ltd. Vs. Liaqat Ali etc." in the following terms:-

> ***6... The Act of 1973 has been enacted for the benefit of the employees, inter alia, to give effect to the 'Wage Awards' announced from time to time. The said enactment provides a mechanism for the effective implementation of the 'Wage Board Awards'. Section 2(d) defines 'Newspaper Employee' as meaning any person employed to do any work in, or in relation to, any 'Newspaper Establishments' and includes the categories mentioned in clauses (i) & (ii) respectively. The definition by no stretch of the imaginations can be construed as covering only such employees who continue to be in service while excluding those who no more remain as such. In all the petitions it is an admitted position that the petitioners are or were employed in the respective 'Newspaper Establishments' If the argument advanced by the learned counsel for the petitioners is accepted then it would lead to***

an absurd situation i.e. that an employee who no more remains in service will be left without a remedy in order to assert a right. Even otherwise, such interpretation would tantamount to reading into the statute something not provided therein. If the legislature had intended to exclude such employees from the definition of the expression 'Newspaper Employees' given in section 2(d) of the Act 1973, then it would have used express and unambiguous language in this regard. With utmost respect and for the reasons already discussed, I am not inclined to concur with the judgment rendered by the Quetta High Court in the case titled as "Mayor, Municipal corporation, Quetta versus Abdul Nabi and 95 others" [1986 PLC 764].

9. I have no reason to take a view different from the one taken by this Court in the above referred judgment. As regards the contentions of the learned counsel for the petitioner that since respondent No.1 had duly been paid Rs.4,31,990/- as full and final settlement of his claim, he could not agitate the claim for further payment before the I.T.N.E., I am of the view that since the petitioner had admittedly not implemented the 7th Wage Board Award at the time when the said payment was made to respondent No.1, respondent No.1 was not precluded from petitioning the I.T.N.E. for payment under the said Wage Board Award. This was respondent No.1's statutory right. It is well settled that a person cannot contract out of Statute. Reference in this regard may be made to the law laid down in the case of E.A. Evans Vs. Muhammad Ashraf (PLD 1964 SC 536).

10. As regards the petitioner's objection that respondent No.1 had filed his claim before the I.T.N.E. beyond the period of thirty days from the date he severed his ties with the petitioner, suffice it to say that the Newspaper Employees (Conditions of Service) Act, 1973, does not provide limitation period for a newspaper employee to file a petition before the I.T.N.E. for the implementation of a Wage Board Award. I would tend to agree with the learned counsel for respondent No.1 that the non-payment of dues of a newspaper employee gives such an employee with a continuous and a recurring cause of action against the newspaper. The I.T.N.E. constituted under Section 12-A of the Newspaper Employees (Conditions of Service) Act, 1973, has exclusive jurisdiction in respect of matters pertaining to the implementation of the Wage Board Award published under

Section 11 of the said Act, and the recovery of the dues arising thereunder. No period of limitation has been prescribed for filing of petitions for the implementation of Wage Board Award or recovery of dues accruing thereunder in the Newspaper Employees (Conditions of Service) Act, 1973.

11. It may also be mentioned that the petitioner in his reply to respondent No.1's petition before the I.T.N.E. did not raise objection to the effect that respondent No.1's petition was barred by time or that such a petition could not have been filed by a former newspaper employee. Such omission on the petitioner's part resulted in the learned I.T.N.E. not adverting to such matters in the impugned judgment dated 21.03.2016.

12. By reason of the aforementioned, I have no reason to interfere in the impugned judgment dated 21.03.2016, passed by the learned Chairman, I.N.T.E. Consequently, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham

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