IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR

CIVIL APPEALs NOs. 85-K TO 99-K OF 2015
AND CIVIL APPEALs NOs.1783 & 1784 OF 2016
(On appeal from the orders dated 14.1.2015 and 16.1.2015 passed by the High Court of Sindh, Karachi in C.P.No.D-1492/2012, C.Ps.No.D-2402 to 2403/2012, C.Ps.No.D.2494 to 2505 of 2012 and C.Ps. No.D-298 & D-299 of 2013)

M/s J & S Enterprises Pvt. Ltd. vs. Gulzar Ahmed and others	C.A.85-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Khalid Ahmed Sheikh and others	C.A.86-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Qazi Azam Mehdi and others	C.A.87-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Azizuddin and others	C.A.88-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Rashid Ahmed Khan and others	C.A.89-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Muhammad Shamim and others	C.A.90-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Muhammad Aamir and others	C.A.91-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Muhammad Nazeer and others	C.A.92-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Nisar Ahmed and others	C.A.93-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Zafar Ahmad and others	C.A.94-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Syed Anwar Rashid and others	C.A.95-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Azeem Ahmed and others	C.A.96-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Syed Asad Abbas and others	C.A.97-K of 2015

M/s J & S Enterprises Pvt. Ltd. vs. Zareef Ahmed Qureshi and others	C.A.98-K of 2015
M/s J & S Enterprises Pvt. Ltd. vs. Noor Muhammad and others	C.A.99-K of 2015
M/s Independent Newspapers Corporation (Pvt) Ltd, Karachi vs. Abdullah Jan and others	C.A.1783 of 2016
M/s Independent Newspapers Corporation (Pvt) Ltd, Karachi vs. Khalid Mehmood and others	C.A.1784 of 2016

For the Appellant (in CA 85-K to 99-K/2015)	:	Mr. Sanaullah Ghouri, ASC. Mr. K.A. Wahab, AOR.
For the Appellant (in CA 1783 & 1784/2016)	:	Mr. Rasheed A. Rizvi, Sr. ASC. Mr. Muhammad Iqbal Ch., AOR.
For the Respondents (in CA 89-K & 94-K/2015)	:	Syed Shehenshah Hussain, ASC. Mr. Ghulam Qadir Jatoi, AOR.
For the Respondents (in CA 1783-1784/2016)	:	Barrister Rafiullah, ASC. Mr. Mazhar Ali B. Chohan, AOR.
For the Respondent No.1 (in CA 85-K to 88-K, 90-K to 93-K, 95-K to 99-K/2015)	:	Respondent No.1 in person.
Date of hearing	:	20.06.2018

JUDGMENT

Munib Akhtar, J.: By this judgment, we intend disposing off 17 appeals since common questions of law are involved. In 15 of the appeals the appellant is J&S Enterprises (Pvt) Ltd. ("J&S"), while the appellant in the remaining two is Independent Newspapers Corporation (Pvt) Ltd. ("Independent"). Both companies are part of the Jang Group, the well known media conglomerate, and are "newspaper establishments" within the meaning of the Newspaper Employees (Conditions of Service) Act, 1973 ("1973 Act"). The present appeals arise in the context of this Act and related labor law legislation as in force at the relevant time, being the Industrial Relations Ordinance, 1969 ("1969 Ordinance") and the Industrial and Commercial Establishments (Standing Orders) Ordinance, 1968 ("1968 Ordinance"). All the respondents are "workmen" within the meaning of these statutes. We may note that leave to appeal was granted in the J&S appeals by order dated 13.07.2015. The Independent leave petitions, filed subsequently, were barred by limitation, but both leave to appeal and condonation of

delay was sought on the basis of the aforementioned order. Leave was granted by order dated 30.06.2016, but "subject to limitation".

2. It appears that starting sometime in late 2001 (the exact dates being irrelevant) each of the appellants issued notices terminating the services of the respondents respectively in their employment. The reason given was that on account of advances in technology and consequent modernization of equipment and reorganization of the business, there was no longer any requirement for their services; they had become redundant. The notices were essentially in the same form and it suffices to reproduce only one such (as was done by the learned High Court), being that issued to the respondent in CA 85-K/2015:

> **"SUB: LETTER OF TERMINATION.**
> You are employed as Camera Operator/Helper in J & S Enterprises (Pvt.) Limited. Due to technological changes and advent of computerized digital scanning, digital color, correction, page making and scanning, digital color, correction, page making and designing, the work of Camera Operator/Helper has become redundant as this process is being performed by the computers and allied computerized systems, facilities and provisions.
>
> Therefore, as a part of company's overall plan for technological advancement, better results, reorganization to achieve economic savings, the work of Camera Operator / Helper has become redundant. As a result, your services have become surplus to our requirement.
>
> Your services are, therefore, terminated with effect from 8th November, 2001. You will, however, be paid three month's salary in lieu of notice. You also stand relieved from the aforementioned date.
>
> You may collect your dues from the Accounts Department within a period of seven days on production of Clearance Certificate from the Human Resources Department."

3. The respondents filed grievance petitions under s. 25A of the 1969 Ordinance challenging their termination from service. By a judgment dated 10.04.2003, the learned Labor Court dismissed the petitions of the Independent respondents. The petitions of the J&S respondents also met the same fate by a common judgment dated 31.07.2007. The appeals filed against these decisions were dismissed (subject to certain modifications) by the learned Labor Appellate Tribunal by separate orders (being dated, respectively, 13.08.2012 and 30.01.2012). The respondent employees then took the matter further to the High Court. There, they met with success. The petitions filed by the J&S respondents were decided first, by means of the impugned judgment dated 14.01.2015. The employees had relied on a settlement agreement dated 11.03.1990. According to their case this provided that if on account of modernization a department was being

closed, the affected workmen would be adjusted elsewhere and not made redundant. It was also their case that this agreement continued to hold the field up to the time that the termination notices were issued in 2001. The learned High Court was pleased to accept these submissions. It was held that the "promise" made in 1990 had never been withdrawn and remained valid and subsisting since it was contingent on a future occurrence that, in the event, came about only in 2001. The employees were therefore entitled to the benefit thereof. They ought to have been adjusted elsewhere and not made redundant. Accordingly, the petitions were allowed and the employees were directed to be reinstated in service with all back benefits. The petitions filed by the Independent employees were allowed shortly thereafter, on 16.01.2015, and on essentially the same grounds.

4. Leave to appeal in the J&S appeals was granted to consider the following questions, and these applied also to the Independent appeals:

(i) Whether the petitioner's management [i.e., J&S] was bound by a Memorandum of settling grievances/issues dated 11.3.1990 entered into between Independent Newspapers Corporation (Pvt) Limited and Jang Publications Employees Union (CBA) to adjust the respondent No. 1 in any other department?

(ii) Whether the impugned judgment based on promise made in 1990 Settlement/Agreement with CBA for adjustment of the respondent No. 1 in some other Department constitutes enforcement of promise or reinstatement in service with full back benefits?

(iii) Whether J&S Enterprises Pvt. Ltd. (the petitioner) and Independent Newspapers Corporation (Pvt.) Limited are separate/different legal entities/ establishments having their own staff as well as Collective Bargaining Agents (CBAs)?

(iv) Whether the termination of respondent No. 1 was in accordance with Section 4 of the Newspaper Employees (Conditions of Service) Act. 1973 which provides the condition of "Good Cause to be Shown" for termination of Newspaper Employee?

5. Learned counsel for J&S submitted that the learned High Court erred materially in allowing the petitions. It was submitted that the settlement agreement of 11.03.1990 ("1990 Agreement") was not entered into between the J&S management and the labor union. It was only the Independent management that was a party to this agreement. The J&S and the Independent managements were indeed both party to settlement agreements entered into in 1984, 1987, 1993 and 2006 with the labor unions. However, these agreements did not contain any clause similar to one being relied upon by the respondents, as to be found in the 1990 Agreement. Therefore, J&S had no liability, obligation or responsibility in this regard, as erroneously concluded by the learned High

Court. Even otherwise, and without prejudice to this basic submission, learned counsel contended that the 1990 Agreement had an express termination clause. The agreement came to an end on 30.06.1990 and thus was not, as erroneously concluded by the learned High Court, in force and effect when the termination notices were issued in 2001. Therefore the respondents could not, on any view of the matter, claim the benefit thereof. It was also submitted that redundancy on account of modernization or reorganization of the business was permissible. It was therefore for "good cause" within the meaning of s. 4 of the 1973 Act that the respondents were terminated from service. The forums below the High Court had correctly concluded that the respondents had no claim or case, and the learned High Court had erred materially in coming to the contrary conclusion. Learned counsel for Independent adopted the submissions as above although it was not denied that the Independent management was party to the 1990 Agreement. However, it was submitted that the said agreement was time bound and had expired much before the issuance of the termination notices.

6. Learned counsel for the respondents, as also some of the respondents who appeared in person, strongly defended the impugned decisions. It was submitted that the respondents' services had been wrongly terminated, and without any "good cause" within the meaning of s. 4. It was further submitted that the 1990 Agreement bound both J&S and Independent, and not merely the latter. The agreement remained valid and subsisting and enured to the benefit of the respondents as on the date their services were terminated. Certain case law was also cited. It was prayed that the appeals, being without merit, be dismissed and the Independent appeals also on the ground of being barred by limitation.

7. We have heard learned counsel as above and have considered the record and the case law. Section 18 of the 1973 Act made the 1969 Ordinance applicable to newspaper employees who were workmen. Section 25A of the latter statute provided that a workman could apply to the Labor Court to enforce any right secured or guaranteed to him "by or under any … settlement for the time being in force". Section 2(xxiv) defined "settlement" as meaning a settlement arrived at in conciliation proceedings or even otherwise between an employer and his workmen. Therefore, for the respondents to have succeeded on their grievance petitions, they would have had to show that the 1990 Agreement was in force as on the date that the termination notices were issued, and that the said agreement applied to both the appellants. We have considered the 1990 Agreement. It is certainly a settlement. However, it is clearly an agreement entered into between the Independent management and the union. The J&S management is not a

party thereto. Furthermore, the agreement itself states that it is in relation to certain "local issues" with regard to Jang Karachi. When this agreement is compared with the other settlement agreements referred to above, the difference is at once apparent. Those were settlements at large, arrived at between the J&S and Independent managements with the unions of the workmen employed by the Jang Group. It is also clear that none of these agreements had any clause similar to the one being relied upon by the respondents. It is only to be found in the 1990 Agreement.

8. In our view, it follows from the foregoing that since J&S was not party to the 1990 Agreement, insofar as its employees were concerned, it was not (indeed, never) a settlement in force for the time being in their favor for purposes of s. 25A. No grievance petition could therefore have been brought by the respondents in the J&S appeals on the basis thereof. There was no obligation or liability or J&S in terms of the said Agreement. With respect, the learned High Court erred materially in coming to the contrary conclusion.

9. Insofar as Independent is concerned, its management was of course party to the 1990 Agreement. However, here learned counsel for Independent (and also learned counsel for J&S by way of an alternative submission) has placed reliance on a termination clause in the said Agreement, as noted above. Thus, Independent's case would seem to be that there was no settlement for the time being in force as on the date that the termination notices were issued and hence no relief could be claimed by the respondents. Learned counsel for the respondents of course strongly contested this submission. It is therefore necessary to consider the 1990 Agreement in some detail. (It is in Urdu and the translations used herein are ours.) As already noted, the agreement was entered into to deal with certain "local issues". The clause of the agreement being relied upon by the respondents provided that the management had in principle agreed that no department would be eliminated in the process of development and modernization but that its employees be adjusted in other departments. Learned counsel for the appellants, on the other hand, have relied on a subsequent clause, which provided that the decisions noted in the preceding clauses would be implemented immediately except those for which a specific time period had been provided and that all clauses would be implemented by 30.06.1990.

10. We have considered the point. The 1990 Agreement must of course be read as a whole and interpreted in the light of well established rules. When so considered, it appears to us that the agreement was intended to deal with certain immediate issues of

concern peculiar to Jang Karachi. It was not intended to be an omnibus agreement, applicable generally to the workmen of the Jang Group. Indeed, the agreement records at the end that on account of the understanding arrived at therein, the union would withdraw its charter of demand dated 09.11.1989 and the management would withdraw a case filed with the NIRC. Therefore, it appears to us that the 1990 Agreement was intended to deal with local matters of a pressing nature that required an immediate resolution. It was for this reason that there was a clause specifying a time period within which the matters that stood resolved had to be dealt with. The clause being relied upon by the respondents must be construed and applied in this sense and context and not otherwise. In other words, it ought not to be regarded as a free standing clause, essentially enforceable at any future date without limitation. That could lead to anomalous results. Even in the cases at hand, the impugned action was taken more than a decade later. If the respondents are correct, and the clause was intended to apply even in 2001, then there is, in principle, no reason why it ought not to apply, e.g., in 2018, i.e., after a passage of almost 30 years. Potentially, it could last even longer. In our view, any such reading or application of the clause would be incorrect. When properly understood, it was a localized clause that had an operation that was limited both in time and place. It is pertinent to note that in the agreement between the appellants and the unions entered into in 2006 (which is in English), clause 3 expressly provided that "the agreements entered into between the Company [which term collectively meant both J&S and Independent] and the Unions and Supreme Council of Unions in the year[s] 1984, 1987 and 1993 are in force and remain applicable…." The 1990 Agreement is conspicuous by its absence. Therefore, in our view, with respect, learned counsel for the respondents is incorrect in submitting that the 1990 Agreement was in force in 2001 and could found an action under s. 25A. With respect, the High Court erred materially in coming to the same conclusion. In our view, the correct interpretation and application of the 1990 Agreement is that it came to an end on 30.06.1990 as expressly therein provided. The clause being relied upon did not survive or have effect on a date thereafter. For this reason also there was no liability on either of the appellants in terms thereof when the termination notices were issued.

11. This brings us to the final point, namely whether the termination notices were valid in terms of s. 4 of the 1973 Act, i.e., were for "good cause" as thereby required. This is of course a ground that, if applicable, would operate independently of the 1990 Agreement. Section 4 has been considered in some detail by this Court in *Enmay Zeb Publication (Pvt.) Limited v Sindh Labour Appellate Tribunal through Chairman and others* 2001 SCMR 565, a judgment cited by learned counsel for the respondents. We

have considered this decision and the other case law. In our view, the termination of services of a newspaper employee, who is a workman, for the reason that his services have become redundant on account of the reorganization of business brought about, inter alia, because of modernization or technological changes and developments is a "good cause" within the meaning of s. 4. It would certainly appear to be a valid ground for terminating the services of a workman in terms of the 1968 Ordinance and the 1969 Ordinance. It may be noted that s. 17 of the 1973 Act expressly makes the 1968 Ordinance applicable to newspaper establishments. Although the section specifically provides that Standing Order 2 and clauses (1) and (2) of Standing Order 12 are not to apply, the other Standing Orders are applicable. However, we would emphasize that much will also depend on the facts and circumstances of each case. What may be "good cause" in one context and in relation to one newspaper establishment and its employees may not necessarily be so in respect of others. Furthermore, we are here concerned only with workmen. However, we are satisfied that the facts and circumstances of the present case do disclose a "good cause". Therefore, in our view, with respect, the challenge to the termination notices on this ground, to consider which leave to appeal was also granted, cannot succeed.

12. In view of the foregoing, the impugned decisions of the learned High Court cannot, with respect, be sustained on the merits. The questions formulated in the leave granting order must be answered in favor of the appellants. In the circumstances, the delay in the filing of the Independent appeals is condoned.

13. Accordingly, these appeals are allowed. The judgments of the learned High Court are set aside and the decisions of the learned Labor Appellate Tribunal are sustained and affirmed. There will be no order as to costs.

CHIEF JUSTICE

JUDGE

JUDGE

Karachi, the
20th of June, 2018
Not Approved For Reporting
Saeed Aslam/*

Announced in open Court on 13.07.2018 at Islamabad.

s / d
Chief Justice