

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : ICA NO.156-2016

Daily Khabrain

Vs.

Iqbal Mustafa & Another

CASE NO. : ICA NO.152-2016

Daily Khabrain

Vs.

Rafique Hussain Khan & Another

CASE NO. : ICA NO.157-2016

Daily 'The Post'

Vs.

Muhammad Iqbal Chaudhry & Another

CASE NO. : ICA NO.158-2016

Daily Khabrain

Vs.

Shahzad Ashraf & Another

CASE NO. : ICA NO.159-2016

Daily Khabrain

Vs.

Shahzad Ahmad & Another

CASE NO. : ICA NO.160-2016

Daily Khabrain

Vs.

Syed Maqsood Ali Shah & Another

CASE NO. : ICA NO.161-2016

Daily Khabrain

Vs.

Yousaf Haroon & Another

CASE NO. : ICA NO.162-2016

Daily Khabrain

Vs.

Amjad Ali Kiyani & Another

CASE NO. : ICA NO.191-2016

Daily Islam

Vs.

Implementation Tribunal of Newspaper Employees & Another

CASE NO. : W.P. NO.2761-2016

Daily Ausaf

Vs.

Shaukatullah & Another

Appellant by : Hafiz Arfat Ahmad Chaudhry, Advocate
Ms. Shaista Altaf, Advocate
Mr. Sheharyar Tariq, Advocate
Respondents by : Mr. Abdur Rehman S. Alvi, Advocate
Syed Ishtiaq Mustafa Bukhari, Advocate
Ms. Aamra Batool, Advocate
Date of hearing : 21.06.2018

AAMER FAROOQ J. This judgment shall decide instant appeal as well as the appeals and writ petition mentioned hereinabove, as common questions of law and facts are involved.

2. The appellants, in the appeals and the petitioner in writ petition, are the Organizations/Companies and engaged in the business of printing and publishing newspapers. The private respondents are the employees/ex-employees of the referred newspapers. They filed applications/petitions before the Implementation Tribunal created under the Newspaper Employees (Conditions of Service) Act, 1973 (the Act) for implementation of Award and payment of wages/salaries as well as arrears thereof. The Tribunal, after seeking reply from the appellants and petitioner, framed issues and decided in favour of the employees. The appellants challenged the order of Chairman, Implementation Tribunal regarding payment of salaries/wages by way of petitions under Article 199 of the Constitution, which were dismissed by the Judge-in-Chambers vide the impugned judgment, hence the appeals. In case of W.P. No.2761-2016, the execution application was filed in which the petitioner (Daily Ausaf), objected to the maintainability thereof, which objection was turned down vide the impugned order.

3. Hafiz Arfat Ahmad Chaudhry, Advocate Supreme Court *inter alia* contended that Implementation Tribunal was

established under section 12(A) of Newspaper Employees (Conditions of Service) Act, 1973 for implementing the decision of the Wage Board under section 11 of the Act. It was contended that the petitions/applications were filed by the ex-employees/private respondents belatedly i.e. after lapse of a considerable period hence were not maintainable. It was also submitted that in the definition of 'employees', as provided in the Act, ex-employees are not included, inasmuch, as the Tribunal has the power to implement orders and make directions as provided in Section 51 of Industrial Relations Ordinance, 1969; that such orders can be passed with respect to a 'workman', whereas ex-employees are not the workmen. In support of his contentions, learned counsel placed reliance on case reported as 'Associated Press of Pakistan Corporation through Managing Director, Islamabad Vs. Federation of Pakistan through Secretary, Ministry of Labour Manpower and Overseas Pakistanis Division, Islamabad and 2-others' (2010 PLC (C.S.) 1003). It was also contended that under the Act and the rules framed there-under, no limitation is provided for initiation of proceedings for the recovery of wages/salaries; that Limitation Act, 1908 is a procedural law hence would be applicable where the statute in question is silent. Reliance was placed on cases reported as 'S.M. Junaid Vs. President of Pakistan' (PLD 1981 Supreme Court 12), 'The Commissioner of Income Tax, Central Zone-B, Karachi Vs. M.S. Asbestos

Cement Industries Limited, Karachi (1993 SCMR 1276), ‘Dost Muhammad & Another Vs. Rais Satik and Another” (PLD 1962 Quetta 82). It was also contended that where law is silent about the limitation, Limitation Act would be applicable. Reliance was placed on case reported as ‘Allah Dino and another Vs. Muhammad Shah and others’ (2001 SCMR 286).

4. Ms. Shaista Altaf, Advocate adopted the arguments addressed by learned counsel namely Hafiz Arfat Ahmad Chaudhry, Advocate and added that functions and scope of the working of the Tribunal have been elaborately explained by the Supreme Court of Pakistan in case reported as PLD 2012 SC 1.

5. The learned counsels for the private respondents, *inter alia*, contended that applications were filed for implementation of Wage Board Award; that the judgment came in the year 2012 therefore only then employees were eligible/entitled to recover the amount; that the judgment impugned before this Court does not suffer from any legal or factual infirmities; that Limitation Act, 1908 does not apply; that Tribunal has been created under section 12(A) of the Newspaper Employees (Conditions of Service) Act, 1973 and is empowered to order payment of wages.

6. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

7. Instant appeals as well as writ petition raise two questions of law, which are as follows:-

- i) **Whether an ex-employee of newspaper-company can invoke the jurisdiction of the Tribunal to recover salaries/wages with respect to the period, he was working with the said Company?**
- ii) **Whether the Limitation Act, 1908 is applicable to the proceedings before the Implementation Tribunal and if so, what is the period of limitation?**

8. Before embarking upon answering these questions, it is appropriate to reproduce the relevant law on the subject. Under section 12(A) of the Newspaper Employees (Conditions of Service) Act, 1973, the Federal Government may, by notification in the official Gazette, constitute a Tribunal consisting of one or more members to implement the decision of the Board under section 11 of the Act. Under section 11 *ibid*, the decision of the Board shall, within the period of one month from the date of its receipt by the Federal Government, be published in such manner as may be prescribed. In this regard, the decision of the Board/Award under section 11(2) of the Act, comes into operation on such date as may be specified in the decision and where no date is specified, it shall come into operation on the date of its publication and shall remain in force until it is modified or varied by a later decision of the Board published in the manner provided in subsection (1).

9. The powers of the Tribunal, constituted under section 12(A) of the Act, are provided in section 13 of the Act, which read as follows:-

- “13. (1) Notwithstanding anything contained in section 64 of the Ordinance, the Tribunal shall have power*
- a) to try an offence punishable under section 55 of the Ordinance, if the offence relates to failure to implement any decision of the Board;*
 - b) of its own motion, or on the application of a party, to withdraw from any court (except the Supreme Court or a High Court) any application, proceeding or appeal relating to such an offence and dispose of it ; and*
 - c) refer any such application, proceeding or appeal to any such competent court for disposal.*
- (2) Any court to which any application, proceeding or appeal is referred under clause (c) of sub-section (1) shall enquire into it and dispose, of the case as if the application or appeal had originally been made to it or, as the case may be, the proceeding had originally commenced before it.*
- (3) For the trial of an offence referred to in sub-section (1), the [Tribunal] shall follow the same procedure and exercise the same powers as the Commission follows and exercises for the trial of an offence under the Ordinance, and the provisions of the Ordinance, other than the provisions of subsection (9) of section 22A, thereof, shall so far as may be and with the necessary modifications, apply to such trial.*
- (4) The Tribunal shall have the power to issue a direction, which a Labour Court has under sub-section (I) of section 51 of the Ordinance.*
- (5) Subject to any rules of procedure which may be prescribed, the Tribunal may, for the purpose of determining the category of a newspaper establishment or the grade of a newspaper employ or otherwise holding an inquiry for the purpose of implementing the decision of the Board, exercise the same powers and follow the same procedure, so far as may be and with the necessary modifications, as the Commission may exercise or follow for the purpose of adjudicating an industrial dispute under the Ordinance.*
- (6) The Tribunal may require a newspaper establishment to file a declaration in such form and give such information as the Tribunal may determine or require.*

Likewise, section 2 (d) of the Act defines ‘newspaper employee’, which reads as follows: -

“‘newspaper employee’ means any person employed to do any work in, or in relation to, any newspaper establishment and includes—

- i) A whole-time journalist, including an editor, a leader writer, news editor, feature writer, reporter, correspondent, copy tester, cartoonist, news photographer, calligraphist and proof-reader; and*

- ii) *A whole-time non-journalist, including a manager, clerk, stenotypist, printing engineering, linotype operator, composer, type-setter, photo studio attendant, printing worker, an accountant and an office peon*

Section 2(e) of the Act defines ‘newspaper establishment’ as follows:-

“(e) ‘newspaper establishment’ means an establishment under the control of any person or body of person, whether incorporated or not, for the production, printing or publication of one or more newspapers or for conducting any news agency or syndicate”

Section 2(h) defines ‘wages’ as provided in the Payment of Wages Act, 1936 and includes any gratuity or other payment declared as wages by the Board. Section 23 of the Act empowers the Federal Government to make rules for carrying out the purpose of the Act by Notification in the Official Gazette. In this behalf, subsections (2) & (gg) of Section 23 of the Act empower the Federal Government to make rules for the procedure to be followed by the Tribunal in determining categories of newspaper establishment or grades of newspaper employees or holding inquiries for the purpose to implement the decision of the Board.

10. Pursuant to section 23 *ibid*, the Federal Government, published in the Official Gazette through Notification SRO No.620(I)/77, the Implementation Tribunal for Newspaper Employees (Procedure and Functions) Rules, 1977 (the Rules). Rule 7 of the Rules requires the Tribunal to send notice to the newspaper establishment for implementation of the decision of the Wage Board in the prescribed form and if no information is provided within the prescribed time under

Rule 8, to pass such orders as it deems appropriate. Under Rule 9 of the Rules, when the declaration form or other information is submitted by a newspaper establishment, a copy thereof along with Form-D, if considered necessary, may be sent to the collective bargaining agent, if any, or to the employees organization of the establishment, and if there be no such organization, to the trade union of the region concerned, for comments. Rule 15 empowers the Tribunal to dispose of individual grievances of a newspaper employee, if his name was not included in the declaration form submitted by the management or if he joins service after declaration form then seeking direction for insertion of his name. Rule 16 provides procedure for any complaint/application filed for recovery of money or wages by an employee from his employer. Under sub-rule (2) of Rule 16 of the Rules, the Tribunal issues notices and the employer can file an application. In this behalf, after hearing the parties, the Tribunal may pass any order as envisaged in subsection (1) of Section 51 read with subsection (4) of Section 13 of the Act. Under Rule 17, the procedure prescribed in Code of Civil Procedure, 1908 may be followed as far as it can be made applicable in the proceedings before the Tribunal.

11. Section 51 of the Industrial Relations Ordinance, 1969 reads as follows:-

“51. Recovery of money due from an employer under a settlement or award.—(1) Any money due from an employer under a settlement, or under an award or decision of the Arbitrator, Labour Court or Tribunal may be recovered as arrears of land revenue or as a public demand, if upon the application of the person entitled to the money, the Labour Court, so directs.

(2) Where any workman is entitled to receive from the employer any benefit, under a settlement or under an award or decision of the Arbitrator, Labour Court or Tribunal, which is capable of being computed in terms of money, the amount at which such benefit shall be computed may, subject to the rules made under this Ordinance, be determined and recovered as provided for in sub-section (1) and paid to the workman concerned within a specified date.

Termination of service—Reinstatement with back benefits ordered- Failure to re-instate. The Labour Court is empowered to direct payment of money value in lieu of any other benefit to which a workman is entitled under such decision. Re-instatement with back wages—The Labour Appellate tribunal is competent to determine scope and meaning of “Wages”, notwithstanding payment of Wages Act. The wages in such cases cover wages from the date of termination of service to the date of order of reinstatement and the period for which such order remains un-complied. The Conversion of certain elements like leave entitlement and statutory bonus into cash, not beyond jurisdiction of Tribunal.

High Court holding section 51 envisaging recovery of any money due from an employer under any settlement, award or decision but not for determination of any dues claimed against employment. Petitioner contended that petitioner’s claim was covered by sub section (2) of section (51) of the I.R.O which aspect has not been properly appreciated by the learned High Court—Held, the above contention needs examination. Leave to appeal accordingly granted”.

12. The judgment of the Hon’ble Supreme Court of Pakistan titled ‘All Pakistan Newspapers Society and others Vs. Federation of Pakistan and others (PLD 2012 SC 1), clinched the law on the subject inasmuch as the august Apex Court observed as follows:-

“52. Constitutionality of the ITNE was also questioned on behalf of the petitioners, contending that no judicial or quasi-judicial powers are available to the ITNE for recording evidence and effecting recovery of the wages, therefore, the authority so conferred upon the ITNE is against the concept of due process of law, inasmuch as the functions being performed by the ITNE do not specify the irreducible minimum requirement for safe administration of justice as well and is tantamount to setting up a forum, which is much beyond the status of parallel judicial system. Thus, sections 12A and 13 may be declared violative of Article 4 and the Fundamental Right enshrined in Article 9 of the Constitution. On the other hand, the learned counsel for the

respondent contended that the ITNE so far has not awarded conviction nor any such order if passed has been challenged or brought before this Court, therefore, to the extent of powers of the ITNE under section 13(1)(a) in the instant proceedings need not to be examined. As far as the remaining powers of the Tribunal are concerned, the same are of administrative nature, meant for the purpose of implementation of the decision of the Board.

54. As far as the powers conferred upon the Tribunal under section 13(4) of issuing direction which a Labour Court is empowered to issue under section 51(1) of IRO 1969 for recovery of wages as arrears of land revenue of public demand, it is an admitted feature of the case that in this behalf the Tribunal is performing function of effecting recovery of the wages which has already been determined by the Board. Such powers, if exercised, cannot be considered contrary to the due process of law or against Article 9 of the Constitution because on the revenue side as well as in banking matters or the Cooperative Societies Act, such powers are available to the authorities mentioned therein as Collectors of Revenue, therefore, we are of the opinion that the Tribunal cannot be debarred from implementing the Award in absence whereof it would not be possible to implement the Award because the Chairman of the Board becomes functus officio after pronouncement of the Award, which the Board has to do in 180 days of its constitution, and its publication in the official gazette. If the Award is not implemented, the whole exercise undertaken in this behalf shall be a futile one because no remedy is available to implement the same. Therefore, under the special circumstances, and keeping in view the background on the basis of which the newspaper employees have been treated as a separate class from the other employees working in different industries would be left with no remedy. It is a cardinal principle of law that where there is a right, there is a remedy".

The above law can be summed up by stating that under the Act, the Federal Government is to appoint a Board for determination of wages of employees of newspaper establishments which shall render decision/award, the newspaper establishment shall pay wages/salaries to its employees according to it. The Award comes into operation from the date it is mentioned therein or from the date when it is to be published in the Official Gazette and remains in field till it is modified or varied. In order to implement the Wage Board Award, Implementation Tribunals have been

established which obtain requisite information from a Newspaper Establishment regarding its employees so that when an application for wages is made, the fact can be verified whether the employee is working or has worked in the referred establishment. The Tribunal is also empowered to entertain individual grievances of the employees regarding recovery of wages. Under section 13 *ibid* the Tribunal, while implementing the Award, or for recovery of wages, may give directions as provided in subsection (1) of Section 51 of Industrial Relations Ordinance, 1969 i.e. to order for recovery of money as arrears of land revenue. The procedure, which is to be adopted by the Tribunal, is provided in The Implementation Tribunal for Newspaper Employees (Procedure and Function), Rules, 1977 and under Rule 17 *ibid*, the procedure provided in Code of Civil Procedure, 1908, is to be followed as far as possible. Moreover, under sub-rule (2) of Rule 16, if after hearing the parties, the Tribunal is of the view that directions are to be issued for recovery, it has the powers to order so as provided in subsection (1) of Section 51 of 1969 Ordinance.

13. The Award, which is in field and which is the subject matter of the *lis*, is the 7th Wage Board Award. The referred Award came into operation on 25.10.2001 and still holds the field.

14. As stated above, various applications were filed by the private respondents in the instant appeals and the writ

petition for recovery of arrears of salaries on the basis that the newspaper establishments have not paid them the same in accordance with 7th Wage Board Award. Undoubtedly, the appellants and the petitioner in writ petition mentioned above, are the newspaper establishments and there is little or no dispute regarding the fact that private respondents are or were working with the referred establishments.

15. An objection has been raised by the appellants and the petitioner regarding entitlement of ex-employees to agitate the matter before the Tribunal for recovery of their wages. In this behalf, reference has been placed on case reported as 'Associated Press of Pakistan Corporation through Managing Director, Islamabad Vs. Federation of Pakistan through Secretary, Ministry of Labour Manpower and Overseas Pakistanis Division, Islamabad and 2 others' (2010 PLC (C.S.) 1003), wherein this Court observed as follows: -

"By reading the above-mentioned provisions together, it can be safely concluded that the Tribunal constituted under section 12-A of the Act has a very limited jurisdiction. The Tribunal can exercise jurisdiction only with regard to the implementation of the decision of the Wage Board. If the claim of the Newspaper employees is based upon the provisions of sections 4, 5, 6, 7, or 8 of the Newspaper Employees (Conditions of Service) Act, 1973 or the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 or any agreement or settlement or an award other than an award of the Board or upon rights guaranteed under any other law, the employee shall invoke the jurisdiction of the Labour Court or the National Industrial Relations Commission. The jurisdiction of the Tribunal can only be invoked if claim is based on the decision of the Wage Board. In the case in hand, the claim of the respondent Syed Muhammad Ilyas Shah is based on the provision of section 5 of the Newspaper Employees (Conditions of Service) Act, 1973. The Implementation Tribunal constituted under section 12-A, therefore, had no jurisdiction in the matter. In the present case, the respondent Syed Muhammad Ilyas Shah having retired, is not covered by, the definition of worker within the meaning of

section 25-A of Industrial Relations Ordinance. He, therefore, had a remedy of filing a civil suit”.

There is no cavil with the proposition laid down in the said judgment, however, it is not applicable in the facts and circumstances of instant case inasmuch as it was observed in the said judgment that Tribunal has the power to implement the decision of the Wage Board Award only and any claim, not based on the Wage Board Award, is not entertain-able before the Tribunal, such as claims under sections 4, 5, 6, 7 & 8 of the Act. In the instant case, the private respondents are seeking recovery of wages/salaries as determined by the 7th Wage Board Award. The definition of ‘wages’ is the same as provided in the Payments of Wages Act, 1936 and includes gratuity or other payments declared as wages by the Board. 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) & (2) of the Act list down the job positions which a person can hold being employee of newspaper establishment however as stated

above, the job descriptions are not exhaustive. Any person, who as per the declaration provided by a newspaper establishment regarding its employees, comes within the definition of a 'newspaper employee'. 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. In view of above, though the private respondents are no longer working with the newspaper establishments yet they are still eligible to file for recovery of the amounts as wages. In this behalf, private respondent in writ petition was a column writer, would also be a 'newspaper employee'.

16. No period of limitation is provided in the Act and the Rules framed there-under. In such facts and circumstances, the question is that whether Limitation Act, 1908 would be applicable before the proceedings to the Tribunal. Under similar facts and circumstances, where section 152 of the Companies Ordinance, 1984 provided for ratification of share register but no period of limitation was prescribed, the Hon'ble Lahore High Court in case reported as 'Mrs. Saeeda Mahmood and another Vs. Anas Munir Pvt. Ltd. through Chief Executive and 6-others'(2007 CLD 637), observed as follows:-

"8. Reverting first to tile preliminary objection taken by the respondents that the instant petition is barred by limitation or otherwise barred by flux of time. The objection of limitation as

raised has come for adjudication before this Court in the context of the petition under section 152 of the Companies Ordinance No.XLVII of 1984. This Court in the judgment reported as Talib Hussain v. Babu Muhammad Shafi and 12 others PLD 1987 Lahore 1 has held that:--

"7. This plea is misconceived. The power vesting in Court under section 152, is to be exercised in cases where legal title of the applicant clear, as in a complicated or doubtful case, summary jurisdiction ought not to be exercised. This was so held as early as the year 1877 in the matter of the Diamond Rock Boring Company Ltd. (1877) 2 Q.B.D. 463. It is true that this section gives the Judge wide discretion in deciding matters relating to the rectification of Register of Members but that would mean that each and every controversy raised respecting the shares or right claimed with regard thereto can be considered and determined by the Court. In a case where sale of shares is not complete, remedy under general law is to be availed of by instituting proper proceedings in the civil Courts of plenary jurisdiction. The summary proceedings under section 152 Companies Ordinance, 1984, cannot be resorted to when the suit for seeking same relief has become barred by time under the Limitation Act. Again the discretion vesting in the Court will not be exercised in favour of a party guilty of laches. The delay in a given case may give rise to equitable considerations and disentitle a party from seeking a particular relief. In the instant case sale of shares was admittedly not complete. Learned counsel for the petitioners was not in a position to urge that suit for specific performance if now filed, will not be liable to be dismissed as barred by time. The petitioners in the circumstances noted above are not entitled to invoke jurisdiction vesting in this Court under section 152, Companies Ordinance. For the reasons given above, there is no alternative but to dismiss this petition."

The matter also came up for consideration before the Honourable Sindh High Court in the case reported as Syed Akbar Ali v. Mamrn Ali Bumasuk (Pvt.) Ltd. and others 2006 CLD 960, wherein it has been held as under:--'

"A party, who called in question title of the shares and of omitting his name fraudulently from the register of Company, has two remedies i.e. by filing a suit for declaration before the civil Court and/or by filing an application, under section 152 of the Companies Ordinance, 1984 but such remedies ought to have been invoked within the period of limitation provided and if no period is specifically provided then within reasonable period of time. Without going into the question whether Article 120 of the Limitation Act and/or Article 481 of the Limitation Act is applicable to the petition under section 152 Companies

Ordinance, 1984 or novas such petition is neither a suit nor an application under section 3 of the Limitation Act, the petitioner cannot be allowed to call in question transfer of shares at his own sweet-will. Once a remedy of Civil suit has become barred by time then only in exceptional circumstances a party can be allowed to avail other remedy if available in law. Since the petitioner has failed to give any reason what to say cogent reason for not questioning the transfer of shares from his name for 11 long years the petitioner is not entitled to discretion by relief under section 152 of the Companies Ordinance, 1984, the petition is, therefore, dismissed."

9. In the case -reported as PLD 2002 Lahore 443, an objection was taken that an application under section 152 of the Companies Ordinance No.XLVII of 1984 was barred by limitation having been filed beyond the period prescribed under Article 120 of the Limitation Act 1908. The said objection was noted but no definitive opinion was expressed by the Court and the petition under section 152 of the Companies Ordinance No.XLVII of 1984 was dismissed on the ground that allegations made therein could not be resolved without recording of detailed evidence, which exercise was not germane to the summary proceedings under the Companies Ordinance, therefore,' the petitioner must seek his remedy before the Civil Court first. In the said case, the objection had been raised relying upon the judgment of the Indian Supreme Court reported as Sha Mulchand and Co., Ltd. v. Jawahar Mills Ltd. Salem AIR 1953 SC 98 at 104, wherein the Honourable Supreme Court of India while dealing with the matter held as follows:--

"We need not, however, on this occasion, pursue the matter further, for we are of the opinion that even if Article 181 does apply to the present application it may still be said to be within time. The period of limitation prescribed by that Article is three years from the time "when the right to apply accrues". It is true that no further notice after the shares are forfeited, is not necessary to complete the forfeiture of the shares: See-'Knight's case (1867) 2 Ch 321, but it is difficult to see how a person whose share is forfeited and whose name is struck out from the register can apply for rectification of the register until he comes to know of the forfeiture. The same 'terminus a quo' is also prescribed in Article 120, Limitation Act. In O.R.M.O.M.S.P. (Firm) v. Nagappa Chettiar' ILR 1941 Mad 175 (PC) which was a suit to recover trust property from a person who had taken it, with notice of the trust, by a transaction which was a breach of trust, the Privy Council approved and applied the principles of the earlier Indian decisions referred to therein to the case before them and held that the time began to run under Art. 120 after the plaintiff came to know of the transaction, which gave him the right to sue Therefore, the Company must be deemed to have come to know of its cause

of action after it came to life again and the present application was certainly made well within three years after that event happened on 16-2-1945. If Article 181 does not apply then the only Article can apply by analogy is Art. 120 and the application is also within time. In either view this application cannot be thrown out as barred by limitation."

10. In subsequent decisions in the Indian jurisdiction, it has however been observed that a petition seeking rectification of the register of members falls within the ambit of residual Article of the Limitation Act for the filing of applications with the prescribed limitation of three years. In this behalf reference may be made to the judgment Delhi High Court reported as Anil Gupta v. Delhi Cloth and General Mills Co. Ltd. 1983 (54) Companies Ordinance Cases 301.

11. An over view of the judgment cited at the bar referred to above reveals time available for filing a petition under section 152 of the Companies Ordinance, 1984 is not open ended where a suit based in a same cause of action seeking substantially the same relief as prayed for under section 152 of the Companies Ordinance No.XLVII of 1984 has become barred by limitation, the application of this under section 152 of the Ordinance would ordinarily be liable to be dismissed. Time of the knowledge of the facts and circumstances giving rise to the cause of action would be relevant. In our jurisdiction there appears to be no definitive precedent to the effect that the provision of Limitation Act applies to a petition under section 152 of the Companies Ordinance or whether the same is covered under Article 120 or Article 181 thereof however in the Indian Jurisdiction such an application is treated to be covered by the residual Article pertaining to filing of application (i.e. in para materia to Article '181 of the Limitation Act 1908)".

17. The case law, relied upon by the appellants, is also instructive. It has been consistently held by the august Apex Court that Limitation Act, 1908 is a procedural law. Reliance is placed on cases reported as 'S.M. Junaid Vs. President of Pakistan' (PLD 1981 Supreme Court 12) & 'The Commissioner of Income Tax, Central Zone-B, Karachi Vs. M.S. Asbestos Cement Industries Limited, Karachi (1993 SCMR 1276). Likewise, in case reported as 'Allah Dino and another Vs. Muhammad Shah and others' (2001 SCMR 286), the august Apex Court observed that where the statute, governing the

proceedings, did not prescribe period of limitation, the proceedings instituted therein, would be controlled by Limitation Act, 1908 as a whole.

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 there-under, 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.

19. As noted above, 7th Wage Board Award came into existence in October, 2001 hence was to be implemented from the said date. All the newspaper employees, working in the newspaper establishments, seek recovery of wages/salaries if the wages are not paid to them within three years when the same were due. However, where default is

recurring i.e. every month or the period after which the salary was to be paid, would give rise to new cause of action hence period of limitation of three years would be therefrom.

20. In ICA No.156-2016, respondent No.1 namely Iqbal Mustafa, worked from 20th May, 2005 to May, 2008; he filed the application for recovery of wages on 19.12.2013, which clearly is beyond the period of three years hence was barred by time. Likewise, in ICA No.162-2016, application was filed on 27.06.2012 for recovery of wages pertaining to the month of October, 2005, which again is barred by time. In ICA No.191/2016, respondent No.2 namely Abdul Shakoor Goraya, was an employee from January, 2003 to June, 2005; on 09.05.2012, he filed a petition for recovery as arrears of salary; again the same was barred by limitation. In ICA No.161/2016, respondent No.1 joined the newspaper establishment and worked from 05.01.2011 to December, 2011 and filed a petition on 07.03.2012. The referred petition is within prescribed period. In ICA No.160-2016, respondent No.1 filed a petition on 15.08.2011; he claimed salary for the months of July & August, 2010 and salary from May to August, 2011; the petition was within the limitation period. In ICA No.159-2016, respondent No.1 filed a petition on 26.06.2012 for recovery of salary and for restraining order against the newspaper establishment. To the extent of injunction and other orders, the Tribunal has no jurisdiction

in light of law mentioned above. The application filed by respondent does not show the period, for which, the amount is claimed however he did claim that he is entitled to salary of five months without disclosing the time period. In view of the same, the pleadings/assertions are vague and findings of the Tribunal are not tenable hence merit setting aside. In ICA No.158-2016, respondent No.1 filed a petition on 15.05.2012 for arrears of salary while he was employed from 01.03.1999 to 31.07.2008. The claim is barred by limitation. In ICA No.157-2016, petition was filed on 21.06.2012 for recovery of the amount for the period till 31.01.2010. The claim of respondent No.1 appears to be within the prescribed period. Finally, in ICA No.152-2016, petition was filed on 31.05.2012, while respondent No.1 was employed from 1992 to 1995; the claim is barred by limitation.

21. In view of above facts and circumstances, the claims of private respondents in ICA No.152, 158, 191, 162 & 156 are barred by limitation hence the orders passed by the Implementation Tribunal merit setting aside. In view of referred facts, the said appeals are allowed; the judgment of Judge-in-Chambers passed in writ petition is set aside along with the orders passed by the Implementation Tribunal. However, the claim of private respondents/employees in ICA Nos.157-2016, ICA No.160/2016 & ICA No.161, are within the prescribed limitation period therefore the impugned judgment does not suffer from any error of law or the facts;

the said appeals are dismissed. In ICA No.159-2016, the pleadings are vague and it is not clear that, with respect to which period, the claim has been made hence the judgment passed by Judge-in-Chambers as well as the order passed by Implementation Tribunal, are set aside; consequently, the application of the employee namely Shahzad Ahmad, shall be deemed to be pending and decided within a period of 30-days in light of observations made hereinabove.

22. In W.P. No.2761-2016, respondent No.1 filed an application for outstanding dues in the sum of Rs.20,00,000/Rs.25,00,000/-. The referred application was decided on 20.12.2011. On 06.04.2012, respondent was directed to make payment however it filed a petition under section 47 CPC which was accepted on 13.12.2013. Respondent filed W.P. No.487-2014 which was allowed and matter was remanded. In post-remand proceedings, the application was dismissed vide the impugned order.

23. The petitioner seeks setting aside of order dated 20.12.2011 on the legal grounds mentioned above. As mentioned above, procedure prescribed in CPC is applicable as far as applicable. The Implementation Tribunal has no power to review its order as review is a substantive right which is not granted under the Act or the Rules to the parties. Moreover, the direction for payment is to be made and recovery is to be effected in accordance with procedure as provided in section 51(1) of Industrial Relations

Ordinance, 1969. Order dated 20.12.2011 was passed by the Tribunal and not assailed by way of writ petition, hence attained finality. Review petition or an application under section 47 CPC is not applicable before the Tribunal and was rightly dismissed. Therefore, writ petition is without merit and is accordingly dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court on -----

JUDGE

JUDGE

Approve For Reporting.

Zawar

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