

## **Management Of Rashtrdoot, Jaipur vs Rajasthan Working Journalist Union And ... on 22 September, 1969**

**Equivalent citations: [1970(20)FLR1], (1970)ILLJ58SC, (1971)3SCC96, 1969()WLN63, AIRONLINE 1969 SC 2**

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**Bench: C.A. Vaidialingam, I.D.Dua, J.M. Shelat**

### **JUDGMENT**

MR. I.D. Dua, J.

1. The fate of these three appeals (Civil Appeals Nos. 129 to 131 of 1969) with certificate depends on the short question whether Dinesh Khare is a working journalist as defined in Section 2(f) of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act 45 of 1955 (here-After called the Act).

2. The working Journalists of the Rashtrdoot, a dally newspaper, submitted in May 1985, a memorandum to Sri Hazari Lal Sharma, its proprietor, complaining, inter alia, that the interim relief awarded by the second wage board of the working journalists had not been implemented by the management. The second wage board, it may be pointed out, had been constituted by the Government of India under the Act to revise the pay-scales of the working journalists with effect from 1 May 1964. There being no satisfactory outcome of this memorandum, the matter was brought to the notice of the Labour Department and the Deputy Labour Commissioner started conciliation proceeding?. During these proceedings a settlement was arrived at on 27 May 1965 which was duly registered in the register of settlement of the Labour Department. According to this settlement, the management of the newspaper had agreed to pay to all of its working journalists employees interim relief in accordance with the award of the said wage board. The working journalists employees, apparently being satisfied with this agreement, withdrew their demand notice. The management paid interim relief under this agreement to all of its working journalists employees except Dinesh Khare. According to the management, Dinesh Khare was not a working journalist. Khare claimed to be entitled as working journalist to get Rs. 25 per mensem as Interim relief with effect from 1 May 1964 pursuant to the award of the second wage board.

3. The question of Dinesh Khare's claim was then brought to the notice of the conciliation officer by the Working Journalists Union but without any satisfactory result.

The Government of Rajasthan thereupon referred the following dispute to the labour court for adjudication:

Whether Dinesh Khare of Rashtradoot, Jaipur, is entitled to any interim relief given by the second wage board and covered under the mutual agreement dated 27 May 1955, between Rajasthan Working Journalists' Union and Rashtra-doot, Jaipur, if so, what amount is he entitled to ?

4. It appears that bonding this reference relations between Dinesh Khare and the management of Rashtradoot did not improve; on the other hand they became worse. Dinesh Khare was chargesheeted in January 1967 and his services were terminated on 18 February 1967. This resulted in an application to the labour court by Dinesh Khare under Section 33A of the Industrial Disputes Act. The Rashtradoot Working Journalists' Union, it appears, did not feel happy over the action of the management against Khare and tried to persuade the management to reinstate him. Having failed in this effort, the union brought the matter to the notice of the Regional Assistant Labour Commissioner, Jaipur, who started conciliation proceedings. On failure of those proceedings the Government of Rajasthan referred the following dispute for adjudication to the labour court:

Whether termination of the services of Dinesh Khare, editor, Rashtradoot, Jaipur (represented by the Rajasthan Working Journalists Union, Jaipur), by the managing editor, Rashtradoot, Jaipur, is valid and justified?

5. The award dealing with these three matters had given rise to the three appeals before us by the management of Rashtradoot.

6. The labour court after an exhaustive discussion of the evidence, both oral and documentary, produced before it, came to this conclusion that Dinesh Khare was a " working journalist " within the definition contained in Section 2(f) of the Act and that he was, therefore entitled to all the benefits accruing thereunder.

7. It was admitted before the labour court that the management of Rashtradoot had not taken any permission of the labour court under Section 33 of the Industrial Disputes Act for terminating the services of Dinesh Khare during the pendency of the earlier reference. It was further admitted that no domestic enquiry had been held into the charges levelled against him. After reproducing the order terminating Dinesh Khare's services, the labour court observed as follows:

From the evidence on record it is abundantly proved that Khare joined hands with the other fellow-working journalists and that conduct brought displeasure for him from the management. The ordinary facility of phone at his residence was also taken away. He was not paid interim relief granted to the working Journalists. These circumstances show that Khare has been unjustly dealt with. This is a case of victimization and I hold that the termination of services of Khare amounts to dismissal.

8. On this conclusion Dinesh Khare was also held entitled to reinstatement with full back-wages. The management had, it seems, also urged in the labour court that the cause of Khare had not been sponsored by the workmen (working journalists) in the same establishment and, therefore, the references were not competent, but this objection was raised only during the course of argument, there being no challenge to the reference on this ground in the written statement. The decision in all the three matters was in favour of Dinesh Khare. Hence the present appeals by the management of Rashtradoot.

9. Sri A. K. Ben, the learned Counsel for the appellant, took us through the entire relevant evidence on the question whether Dinesh Khare is a working Journalist under the Act. His main contention was that Dinesh Khare, though described as an editor, had been employed mainly in a managerial or administrative capacity by the management of the Rashtradoot and that he performed functions mainly of managerial nature. The counsel drew our attention to several documents on the record which no doubt show that Dinesh Khare used to appoint sub-editors of the Rashtradoot, give directions for payment of salaries to them, deal with employees' applications for leave, etc., and also deal with matters relating to discipline amongst the employees. Our attention was also drawn to the oral evidence given by some of the sub-editors and other employees of the Rashtradoot in which it is asserted that Dinesh Khare never wrote any article for the newspaper and that he was only entrusted with managerial duties.

10. As against this we find on the record a number of returns submitted by the management to the inspector appointed under the Act. Sri Sen also, in fairness, took us through them. Before advertng to the contents of these returns, we may point out that the Inspectors are appointed under Rule 37 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Rules, 1957, framed under Section 30 of the Act (hereafter called the rules). Under this rule it is the duty of every inspector to ensure that the provisions of the Act and the rules and the decisions, if any, of a wage board, constituted under the Act, are implemented in full by the newspaper establishments within his jurisdiction. He is also empowered to visit any newspaper establishment and to make such inquiries and collect such information as he may consider necessary for the proper discharge of his duties. We have on the record an inspection note dated 25 February 1963 (Ex. W. 11) made by i Sri S.S. Pathak, labour inspector, under the Act. From this note it is clear that on 13 February 1963, the date of inspection of the establishment of the daily Rashtradoot as per its records, the following working journalists were employed therein:

- (i) Editor-1.
- (ii) Sub-editore-10 (including one part-time).
- (iii) Proofreaders-3.

Dinesh Khare has also been described in this note as both chief editor and controlling officer. The inspector forwarded this inspection note to the manager of the dally Rashtradoot on 25 February 1983 requesting him to rectify the irregularities and report compliance within a week. A passing reference may also be usefully made to similar documentary evidence showing that the management

used to treat Dinesh Khare as editor. Exhibit M. 5(A) dated 6 November 1958 is a letter from Sri V.K. Joshi, manager, to the labour officer supplying the names of the working journalists. Dinesh Khare's name occurs at the top of this list. Exhibit W. 6 which purports to contain the names of the establishment staff also begins with editor Dinesh Khare's name. Exhibit W. 7, another letter dated 15 February 1960 from Sri Joshi, general manager, to the inspector conveying the information about the number of employees in the office of Rashtrdoot gives the number of journalists to be thirteen. It is not disputed before us that Dinesh Khare is included amongst them. Exhibit W. 7(A) which is a chart of the editorial staff dated 15 February 1963 signed by Sri V.K. Joshi also begins with the name of Dinesh Khare as editor. The inspection report dated 7 February 1961 (Ex. W. 8) made by Sri Kewal Ram, inspector, contains a list of working journalists of this establishment including one editor, who is presumably Dinesh Khare. Exhibit W. 9(A) is the pay fixation chart in which Dinesh Khare is described as editor and his nature of duties as journalistic.

11. Now it is in this state of evidence that the labour court arrived at the conclusion that Dinesh Khare is a working journalist. It was, however, argued on behalf of the appellant that Dinesh Khare does not fall within the definition of working journalist contained in Section 2(f) of the Act. This sub-mission is difficult to accept. "Working Journalist," according to this definition, means.

a person whose principal avocation is that of a Journalist and who is employed as such in, or in relation to, any newspaper establishment, and includes an editor, a leader-writer, news editor, subeditor, feature-writer, copy-taster, reporter, correspondent, cartoonist, news-photographer and proofreader, but does not include any such person who

(i) is employed mainly in a managerial or administrative capacity, or (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

12. An editor is expressly included in this definition. The appellant's counsel attempted to show that though described as an editor, Dinesh Khare had been employed mainly in a managerial or administrative capacity and that he had also been performing the functions mainly of a managerial character. We may, in this connexion, usefully turn to the written (statement filed by the appellant in the labour court.

13. We find that in Para. 2 it was pleaded as follows:

The contents of Para. 2 do not portray true facts. Dinesh Khare was not only working as an editor, but was also employed in a supervisory capacity and performed, during his tenure by reason of the powers vested in him, functions mainly of managerial nature. The nature of the post held by Khare as well as the functions he has been discharging are given in additional grounds. Since Dinesh Khare is not a working Journalist in terms of Sub-clause (11) of Clause (f) of Section 2 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1964, the reference made by the Government is incompetent and this tribunal has, therefore, no jurisdiction to adjudicate upon it.

14. The additional grounds pleaded there in may also be reproduced:

Dinesh Khare is an appointing and dismissing authority of the editorial staff of Rashtrdoot. He also sanctions leave of the staff of the editorial side. He is also the disciplinary authority under the standing orders, as applicable to Rashtrdoot. No working hours are fixed for him and he is not required to sign attendance register as others do. Dinesh Khare also decides and fixes the duty chart of all the editorial staff under him. Increments in the wages of editorial staff are given on his recommendations. These and other similar factors go to show that Dinesh Khare has been vested, since appointment as an editor in 1962, with powers and functions of a managerial nature, and he is, as such, not a working journalist.

15. It was not denied that Khare had been working as an editor. The other functions imputed to him were in addition to his functions as an editor. The question arises, if on this state of the pleadings and evidence as discussed earlier, it can be said that the conclusions of the labour court are either perverse or based on no evidence or are otherwise tainted with such a serious legal infirmity that they should be reopened by us under Article 136 of the Constitution. We are unable to hold that they are. There is legal evidence on the record both oral and documentary, on which the labour court could lawfully base its conclusion. We find no justification for interfering with it.

16. As a last resort Sri Sen submitted that Dinesh Khare had been expelled from the union and that, therefore, the working journalists' union was not sponsoring his cause. For this reason, according to him, the reference was illegal. This point was not raised in the written statement and did not form the subject-matter of any issue. No evidence was, in the circumstances, led on this aspect. Sri Sen submitted that this information was made available to the management only during the course of evidence and it was for this reason that this point was sought to be argued without being raised in the pleadings. We do not think this explanation can be accepted as Justification for raising this point without including it in the pleadings. As soon as the management came to know of this aspect, an application should, in our opinion, have been made for amending the written statement so that basic facts could be found on proper plea, issue and evidence. Having failed to do so, it was not open to the management to found any argument on assumption of facts which are not properly proved. The fact that the labour court had allowed this point to be argued before it is no ground for this Court to entertain this argument at this stage.

17. In the final result the conclusions of the labour court must be held to be unassailable.

18. On the view that we have taken the interveners did not desire to address any argument and indeed they desired to withdraw their intervention and we permitted them to do so.

19. The appeals accordingly fall and are dismissed but in the circumstances of this case without costs.