

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED  
MR. JUSTICE QAZI FAEZ ISA  
MR. JUSTICE YAHYA AFRIDI

**CIVIL APPEAL NO. 651 OF 2012**

(On appeal against order dated 29.05.2012 passed by the Islamabad High Court, Islamabad in I.C.A. No. 257-W of 2012)

**Syed Imtiaz Ali**

... Appellant

*versus*

**Chairman, Implementation Tribunal for  
Newspaper Employees (ITNE), 2<sup>nd</sup> Floor,  
Old CBR, Building Civic Center, G-6,  
Markaz, Islamabad and others**

... Respondents

For the Appellants : Mr. M. Habib Ullah Khan, ASC.  
Mr. Nazir Ahmed Bhutta, ASC.

For Respondent No. 1 : Ex-parte

For Respondent No. 2 : Mr. Qausain Faisal Mufti, ASC.

Date of Hearing : 09.04.2019

**JUDGMENT**

**YAHYA AFRIDI, J.** – Syed Imtiaz Ali, the present appellant, has been granted leave of this Court *vide* order dated 12.07.2012 to consider the decision dated 29.05.2012 passed by the Islamabad High Court, Islamabad in ICA No. 257-W of 2012, in terms that:

"Having heard learned counsel for the petitioner at some length, leave is granted inter alia to consider whether the award of Rs. 800,000/- as compensation with reference to clause 9 of the mutual agreement dated 29.5.2009 was not a civil claim with reference to Section 74 of the Contract Act and could the Tribunal decide the said issue?

2. In the meanwhile, status quo shall be maintained."

2. In essence, the entire case revolves around the claim of Syed Saif-ul-Islam Khalid (**private-respondent**) made before the Implementation Tribunal constituted under the enabling provisions of the Newspaper Employees (Conditions of Service) Act, 1973 (**Act**), seeking: implementation of the 7<sup>th</sup> Wage Board Award amounting to Rs. 800,000 accrued on the termination of the agreement dated 28.05.2009; five month's salary amounting to Rs. 200,000; and transfer of a motor car to his name. Interestingly, the private-respondent, before moving the Implementation Tribunal, had sought the same relief through arbitration by invoking the jurisdiction of the Senior Civil Judge, Islamabad under Section 20 of the Arbitration Act, 1940. The said petition was, however, withdrawn unconditionally, and it was thereafter that the private-respondent moved his claim before the Implementation Tribunal under the Act. What is important to note is that, during the proceedings before the Implementation Tribunal, the private-respondent admitted to having signed the acknowledgement receipt dated 09.12.2010 (Mark A/R), wherein he professed to having received his entire dues up to November 2010 from the appellant. This claim of the present private-respondent was accepted by the Implementation Tribunal. The present appellant being aggrieved of the decision passed by the Implementation Tribunal challenged the same in constitutional jurisdiction of the Islamabad High Court, Islamabad which was rejected, and the Inter Court Appeal filed by the present appellant also met the same fate. Hence, the present appeal, with the leave of this Court.

3. We have heard the learned counsel for the appellant as well as the learned counsel for the private-respondent, and with their able assistance, we have gone through the record.

4. The Act is a piece of legislation aimed at preserving and protecting the prescribed rights of persons employed in the newspaper industry. In this regard, it provides for the said employees a comprehensive and exclusive regime: transparency in their order of appointments (Section-3); good cause in writing to be shown prior to their termination (Section-4); benefit accruing to them from the Provident Fund to be maintained by the Newspaper Establishments (Section-5); time limit of their working hours (Section-6); their term of leave (Section-7); their medical care (Section-8); and most importantly, the fixation of their minimum wages by the Wage Board, which are to be published and are to be binding on all employers of Newspaper Establishments (Section-15); and its agitation and enforcement by the Implementation Tribunal (Sections 12-A and 13). For workmen employed in the Newspaper Establishments, apart from the above rights and redressal mechanism provided under the Act, Sections 17 and 18 *supra* further provide them with all the protections provided to workmen under the West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance, 1968 (**Standing Order**), and Industrial Relation Ordinance, 2012 (**Ordinance**).

5. The case in hand hinges around the jurisdictional contours of the Implementation Tribunal constituted under Section 12-A of the Act. The scope of its authority has been expressly provided under Section 13 of the Act, while the procedure for its proceedings of the inquiry to implement the Wages Board Award

has been provided under the Newspaper Employees (Procedure and Function) Rules, 1977 (**Rules**) framed under Section 23 *supra*. To correctly appreciate the true purport of the said provisions, let us review the same, they read as under:

**"12-A. Tribunal-** (1) 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.**

(2) The Chairman and members of the Tribunal shall be appointed by the Federal Government on such terms and conditions as it may determine.

(3) Where the Tribunal consists of one member only, that member, and, where the Tribunal consists of more members than one, the member designated by the Federal Government, shall be the Chairman of the Tribunal.

(4) The Chairman of the Tribunal shall be a person who has been, or is, or is qualified to be, a Judge of a High Court.

(5) The qualifications for appointment as a member of the Tribunal shall be determined by the Federal Government."

**"13. Powers of the [Tribunal]-** (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 sub-section (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 (1) 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 employee 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 an 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."

**Section 23(gg) of the Act:**

"[(gg) the procedure to be followed by the Tribunal in determining the categories of newspaper establishments or grades of newspaper employees or holding an inquiry for the purpose of implementing the decision of the Board; and]"

(emphasis provided)

6. On careful review of the above-mentioned provisions, it is noted that the essential aim of constituting the Implementation Tribunal is to provide a forum for redressal of the grievances of newspaper employees regarding the payment of the wages fixed by the Wage Board. In doing so effectively, the legislature has, in its wisdom, vested the Implementation Tribunal with the authority to enforce its directions upon the newspaper establishments - as is provided to the Labour Court under subsection (1) of Section 51 of the Industrial Relation Ordinance, 1969 (**I.R.O.**) (presently, subsection(1) of section 52 of the Industrial Relations Act, 2012 (**I.R.A.**)). The said provisions provide as under:

**"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."

**"52. Recovery of money due from an employer under settlement or award.-(1)** Any money due from an employer under a settlement, or under an award or decision of the Arbitrator, the Commission 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 Commission so directs."

7. What is important to note is that the adjudicatory power of a Labour Court provided under subsection 2 of Section 51 of the I.R.O, and presently under subsection 2 of Section 52 of the I.R.A, as stated above, was not expanded to the Implementation Tribunal under the deeming provisions of section 13 of the Act. This being so, the intention of the legislature was thus clear - that apart from the trial of the offences stipulated under Section 13 of the Act, and the implementation of the Wage Board Award under Section 11 *supra*, no other pecuniary claim of a newspaper employee came within the jurisdictional sphere of the Implementation Tribunal constituted under section 12-A of the Act. In similar circumstances, this Court, while discussing the constitutional limits of the Implementation Tribunal in **Matri Publication's case (2001 PLC 662)** explained that;

"The Federal Government constituted a Tribunal to implement the decision of the Board, which under subsection (4) of section 13 of the Act could exercise the same powers as that of a Labour Court, to issue directions under section 51(1) of the Ordinance which provides that any money due from an employer under a settlement or award or decision of the Arbitrator be recovered, upon the application of the person entitled to the money by the Labour Court or the Tribunal as arrears of land revenue. It may be noted that the Legislature in its wisdom has only conferred the powers on the Implementation Tribunal under section 51(1) of the Ordinance which the Labour Court could exercise for the recovery of money due from an employer under a settlement or award and it has specifically excluded subsection (2) of section 51 of the I.R.O., whereby amount was to be determined and recovered. As is apparent from the nomenclature of the Tribunal itself that it is an "Implementation Tribunal" for newspapers' employees constituted under section 12-A of the Act by the Federal Government to implement the decision of the Wage Board which has determined the rates of wages in respect of the newspapers' employees."

(emphasis provided)

8. In a later case, the rationale for vesting the authority of executing the wages fixed by the Wages Board in the

Implementation Tribunal was discussed by this Court in **All Pakistan Newspapers Society's case (PLD 2012 SC 1)**, as under:

"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 Collector 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 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."

9. With regards to the merits of the present case, it is noted that the private-respondent has based his entire claim before the Implementation Tribunal on the agreement dated 29.05.2009 (**Agreement**). The terms thereof, *inter alia*, stipulate that: the parties agreed to set-up a weekly journal (preface); the terms of the Agreement were agreed upon for a period of five years (clause 1); the profits of the weekly journal, after deduction of the actual expenses of running the venture, would be distributed amongst the parties - the appellant was to receive 80% of the profits, while the private-respondent was to receive 20% of the same (clause 4); the appellant would invest in setting up the venture, and retain its ownership, the private-respondent shall assume responsibilities as its editor and be paid a sum of Rs. 40,000 per month (clause 5); the appellant, in case of terminating the Agreement, shall give the private respondent a three months' notice (whereby monthly

renumeration shall not be discontinued) and shall pay an additional sum of Rs. 800,000 at departure (clause 9); the parties also added an arbitration clause in order to resolve any dispute arising out of the Agreement (clause 12).

10. On carefully reviewing the terms of the Agreement, it is but evident that the parties intended to set up a commercial venture of publishing a weekly journal. The appellant contends that the agreed venture was a partnership, while the private respondent insists the same to be his appointment order as the editor of the weekly journal.

11. To determine the true nature of the relationship of the parties under the Agreement, and the legal status of the private-responder thereunder, we may first test the covenants therein on the touchstone of the definition of the term "*partnership*" provided under Section 4 of The Partnership Act, 1932 (**Act of 1932**), which provides the same to be a "*relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all*". A close review of the above definition in juxtaposition with the terms of the Agreement reveals that the venture intended to be carried out by the parties was a partnership, as it fulfilled the three precedent conditions set in the above section: firstly, the parties agreed to set up a business of publication of a weekly journal; secondly, the parties were to share the profits of that business; and finally, the said business of publication was to be carried out by both the parties, as their individual responsibilities were clearly defined in the Agreement.

12. If viewed from another perspective, it is noted that the relationship between the parties under the Agreement had



provided therein elements of both *master and servant* and of a *partnership firm*: it had attributes of *master and servant* as the private respondent was appointed as the editor of the journal with a monthly stipend of Rs. 40,000, and features of a *partnership firm*, as the parties were to share the profits that were to accrue from the business of the venture in the ratio of 80:20. Now, if we apply the “*dominant test*” to the terms of the Agreement, we note that the relationship of *master and servant* cannot be conceived when the profits accruing from the business venture undertaken by the *master* were to be shared with the *servant*. However, it is possible for a *partner* in a partnership firm to be paid in addition to his pre-determined share of profits for the services he renders in furtherance of the business venture of the partnership firm, as is the present case of the private-respondent. Thus, in pith and substance, the attributes of a *partnership* dominate those of *master and servant* governing the relationship of the parties under the Agreement. Thus, the intention gathered from the terms of the Agreement reveals that the parties were to be partners in a *partnership firm* and their relationship was not to be governed by the principles of *master and servant*.

13. The Supreme Court of Canada, in the case of **Backman v. Canada**, [2001] 1 S.C.R. 367, took a holistic view of the actual test of a business being a partnership or otherwise, in terms that:

“Courts must be pragmatic in their approach to the three essential ingredients of partnership. Whether a partnership has been established in a particular case will depend on an analysis and weighing of the relevant factors in the context of all the surrounding circumstances. That the alleged partnership must be considered in the totality of the circumstances prevents the mechanical application of a checklist or a test with more precisely defined parameters. In other words, to ascertain the existence of a partnership the courts must inquire into whether the objective, documentary evidence and the surrounding facts, including what the parties actually did, are consistent with a subjective intention to carry on business in common with a view to profit.”

14. In a more recent case, the Supreme Court of Canada, in the case of **McCormick v. Fasken Martineau DuMoulin LLP** [2014] 2 SCR 108 introduced the *test of control and dependency* and observed:

“Control and dependency, in other words, are a function not only of whether the worker receives immediate direction from, or is affected by the decisions of others, but also whether he or she has the ability to influence decisions that critically affect his or her working life. The answers to these questions represent the compass for determining the true nature of the relationship.”

15. A similar approach has been adopted by the Supreme Court of the United States of America in the case of **Clackamas Gastroenterology Associates, P. C. v. Wells**, 538 U.S. 440 (2003), while endorsing its previous decision in **Nationwide Mut. Ins. Co. v. Darden**, 503 U.S. 318 (1992), wherein it held that where the statute did not helpfully define the term *employee*, the common-law element of *control* was the principal guidepost to be followed in deciding whether a person should either be regarded as an *employee* or a *partner*.

16. Even if we test the relationship of the parties under the Agreement on the touchstone of the “*test of control and dependency*”, as undertaken in other Common Wealth jurisdictions, it is noted that the private-respondent, under the Agreement, had complete control as the editor of the journal, and that too, with no interference from the appellant in his working. Thus, judged from every angle, it can safely be held that the appellant and the private-respondent had agreed to carry the business of running the weekly journal as a partnership.

17. The claims of the private-respondents that were put before the Tribunal, in *seriatim*, can be found as under:

I. Recovery of Rs. 800,000 under clause 9 of the Agreement

This part of the claim relates to seeking recovery, under clause 9 of the Agreement, of an amount of Rs. 800,000 as compensation for the termination of the Agreement. The private-respondent, being a partner in the firm, could not agitate this contractual grievance before the Implementation Tribunal. This relief had no nexus with the implementation of the Wage Board Award; therefore, the Implementation Tribunal was not only not bound to take cognizance of it, but it was also outside its jurisdictional mandate.

II. **Five months' salary amounting to Rs. 200,000**

This claim relates to the five months' salary amounting to Rs. 200,000, which is belied by the acknowledgement receipt of all dues being paid up to November 2010 *vide* notice dated 09.12.2010 (Mark A/R). Even otherwise, this relief did not arise out of the Wage Board Award, and is thus outside the jurisdictional mandate of the Implementation Tribunal.

III. **Transfer of a vehicle**

The final part of the claim relates to the transfer of a vehicle stated to have been given to the private-respondent by the appellant, which, too, is beyond the jurisdiction of the Implementation Tribunal, as the said dispute emanated from a contractual obligation, and not from the Wage Board Award. Thus, the resolution thereof requires to be adjudicated by a competent legal forum and not a special regime provided under the Act.

18. This Court is alive to the three successive concurrent findings passed in favour of the private-respondent, and the general principle of not disturbing such findings at this belated stage. However, in the present case, as noted above, the

Implementation Tribunal has exercised its jurisdiction beyond its lawful mandate under the Act. This gross jurisdictional error cannot be ignored. Surely, when the very foundation of the claim lacks legal sanctions, then the superstructure built thereon must also fall. This crucial jurisdictional lapse escaped the attention of the courts below, and thus, warrants correction.

19. Accordingly, above are the detailed reasons for our short order of even date, whereof this appeal was allowed, in terms that:

"We have heard the learned counsel for the parties at length. For reasons to be recorded later this appeal is allowed and the impugned order dated 29.05.2012, the judgment dated 18.04.2012 passed in W. P. No. 91/2012 and the judgment dated 19.12.2011 of the Implementation Tribunal for Newspaper Employees ("**ITNE**") are set aside. The claim made by the respondent No. 2 before the ITNE was without jurisdiction and thus the same stands dismissed."

JUDGE

JUDGE

JUDGE

Islamabad, the  
9<sup>th</sup> of April, 2019

Approved for Reporting