**Blog**

**New reference order in supersession of previous reference order, is illegal*.***

*A.B.C. Export Vs. State of U.P.*

*LAWS(ALL) 2008 7 256 HC Allahabad 01.07.2008*

Deputy Labour Commissioner superseded the previous reference and amendment made in the reference order dated 8. 4. 2008 by the Labour Commissioner in the garb of amending aforesaid reference order. It appears that previous reference order has been amended by the Dy. Labour Commissioner by deleting the name of M/s A. B. C. Limited and in place thereof name of M/s. A. B. C. Export, which is a partnership concern, has been substituted. As the order of reference is in supersession of earlier order of reference, Hon’ble High Court relying on several judgments held that appropriate Government has no power to cancel, withdraw and supersede the reference already made.

**Section 5 of the Working Journalists Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act which is a general law**

*Gandiv Hindi Daily Vs. State of U. P. CMWP No. 4388 of 2014, February 10, 2014*

The main dispute between the parties is as to whether the respondent No. 4 being a working journalist shall be governed by the provision of Act of 1955 or the Act of 1972 for the purposes of computation and payment of gratuity. From the very beginning the petitioner has been raising the objection that since the respondent No. 4 is a working journalist governed by Special Provision of the Act of 1955, and therefore, no proceedings can be carried under the provision of the Act, 1972 which is a general law. I find that in the case of P. Rajan Sandhi v. Union of India &amp; another, 2010 10 SC 338 para. 11, Hon'ble Supreme Court held as under:-11. …We are of the opinion that Section 5 of the Working Journalists Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists. Hence, the Working Journalists Act is a special law whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, pp. 133 and 134.

**Order by V.C. BHU deciding appeal as representation in mechanical manner is set aside.**

*Pawan Kumar Vs. Vice Chancellor Banaras Hindu University.*

*No. 6102 of 2002 May 21, 2015 Writ Petition No. 6102 of 2002*

Apparently, the executive council treated the order of the respondent no.1, Vice- Chancellor dated 19/23.10.2001 to be an order on the representation of the petitioner and not an appeal under the Second Proviso to Section 7-C(5) of the Act, whereas the fact was that it was an appeal filed by the petitioner against the order of the Vice-Chancellor dated 18.8.2000

**Candidate after appearing in the selection process, cannot challenge the result**

*Banaras Hindu University Vs. Krishna Rai*

*Special Appeal 24 of 2012).July 29, 2016*

Sri V.K. Singh Senior Advocate, assisted by Sri Sunil Kumar Tripathi, Advocate representing Banaras Hindu University as well as Sri Ashok Khare, Senior Advocate, assisted by Sri Sidharth Khare, Advocate contended with vehemence that in the present case selection and appointment had been made strictly as per notification /publication and once petitioners/opposite party had taken chance and have failed to make place for themselves, then this Court ought not have interfered with the matter and accordingly Special Appeal deserves to be allowed.

.Claim made on behalf of the appellants, has been resisted by Sri G.K. Singh, Senior Advocate, assisted by Sri Vijai Shankar, Advocate by making mention that once selection in question was vitiated and dehors the law then this Court shouldnot come to the rescue and reprieve of appellants as such Special Appeal deserves to be dismissed.

It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, 31 only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair:10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful."Reference may also be made to the decision of this Court in Chandra Prakash Tiwari Vs. Shakuntala Shukla.l

**State Government has power to delegate the power of reference u/s. 17(2) of Working Journalist Act, 1955*.***

*Pradhan Prabandhank /Unit Head M/S Amar Ujala Vs. State Of U P*

*LAWS(ALL) 2018 5 606 May,31, 2018.*

In nutshell, the submission on behalf of the petitioner is that the Deputy Labour Commissioner, under sub-section (1) of section 17 of the Act is an authority specified by the State Government only for the limited purpose of satisfying itself whether an amount under the Act is due to a newspaper employee from any employer and if it is satisfied that such amount is due it can issue a certificate for that amount to the Collector, and the Collector shall proceed to recover the same as an arrear of land revenue. But the moment the specified authority comes to a conclusion that the amount is disputed, it must stop at that moment and may send a report to the State Government for taking action under sub-section (2) or leave it open to the newspaper employee to move an application under sub-section (2) of section 17 of the Act to the State Government for a reference to the labour court. But, on his own, the specified authority cannot make a reference to the labour court. Therefore the impugned order of reference is without jurisdiction and void

The contention of the learned counsel for the petitioner that there is a conscious omission of the words "such authority, as the State Government may specify in this behalf" in sub-section (2) of section 17 of the Act, 1955 and therefore it would be deemed that reference can be made only by the State Government and not by the specified authority cannot be accepted because when various parts of section 17 are read as a whole a single seamless scheme emerges. Even otherwise, the notification of the State Government delegates power to the authority specified to deal with applications under Section 17 which necessarily includes power to make reference under Section 17(2). The contention of the learned counsel for the petitioner that by reading 'specified authority' in sub-section (2) of section 17 of the Act by judicial interpretation would amount to filling up a conscious omission in the Act and therefore would be hit by doctrine of casus omissus may now be considered. The rule of casus omissus i.e. what has not has been provided for in the Statute cannot be supplied by the courts, is a rule of interpretation

It is clear that casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

In the instant case, when the entire section 17 of the Act, 1955 is read as a whole, it cannot be said that the legislature intentionally omitted the words "such authority, as specified by the State Government", from sub-section (2) of section 17 of the Act because by providing the power of delegation in sub-section (1) of section 17 of the Act, keeping in mind the scheme of the entire section 17 of the Act, 1955, the State Government was empowered to delegate its power to deal with applications contemplated under Section 17 of the Act, 1955. Otherwise also, the State Government under its general power of delegation by notification can delegate exercise of its administrative power.

51. In the instant case, the State Government had empowered the Deputy Labour Commissioner to dispose of application under Section 17 of the Act which would include power to refer to the labour court as it was a step-in-aid for disposal of the application under sub-section (1) of Section 17 of the Act. Therefore the specified authority did not lack jurisdiction to make a reference to the labour court. Accordingly, the reference order does not suffer from jurisdictional error.

It may be observed that a reference under sub-section (2) of section 17 of the Act does not contemplate exercise of judicial/quasi-judicial power and therefore the power which vests in the State Government to make a reference can be delegated and, in fact, by the notification dated 12th November, 2014, the State Government has clearly delegated its power by specifying the authorities who are competent to dispose the applications contemplated by section 17 of the Act. In fact, reference on an application under sub-section (1) upon a question having arisen is a step-in-aid of final disposal of an application under section 17 (1) of the Act, 1955 and, therefore, by conferring power on the specified authority to dispose the application under Section 17, the State Government, by necessary implication, has conferred power to make a reference as well.

**Daily wagers have no vested right for regularisation.**

*Shiv Chandra Bahadur Vs. STATE OF U. P.*

*WRIT - A No. - 14539 of 2017 November 27, 2018*

Having considered the arguments raised by the learned counsel for the petitioners and the respondents, I have carefully perused the order impugned and also the judgment cited by the counsel for the parties. It is evident that the petitioners could not produce any documentary evidence of their engagement as daily wagers since before29.6.1991 before the Committee concerned, not only their working has been disputed, but also the financial capacity of the Corporation to undertake additional liability arising out of regularisation of such daily wagers.

**Family is not in penury, no mandamus for compassionate appointment after a long time**

*RAJ BALI Vs. Vice Chancellor, Benaras Hindu University*

*Writ - A 23036 of 2000 RAJ 2018*

This is an old matter of more than 20 years hence at this fag end any direction for compassionate appointment cannot be issued in favour of petitioner. Moreso, in 2000 when this writ petition was filed petitioner was 34 years of age and now must be above 52 years. Any relief of compassionate appointment at this stage and after such a long time with breach the very purpose and objective of scheme.

5. The purpose of compassionate appointment is not for providing a post against post. It is not reservation in service by virtue of succession. If the family is not in penury and capable to maintain itself for a long time, no mandamus would be issued after a long time for providing compassionate appointment to a legal heir of the deceased employee.

**Complaint u/s. 3(1)(X) of SC/ST Act by employee against Enquiry Officer, for incident not in public view, quashed by High Court..**

*K. P. Thakur Vs. State of U. P. and another.*

*February 18, 2020 Application U/S 482 No. - 40418 of 2012*

The applicants, by application under Section 482 Cr.P.C., have invoked the inherent jurisdiction of this Court with prayer to quash the entire proceeding of Complaint Case No. 1577 of 2012, under Sections 323 , 504 , 506 I.P.C. and Section 3(1)(X) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act , 1989, pending in the Court of Judicial Magistrate, Duddhi, Sonebhadra.

In present case, the complaint is by an administrative inferior against administrative superior, admittedly, who is conducting a departmental enquiry against him and he had gone there to participate in above proceeding. The Enquiry Officer is to decide as to whether Assisting Officer is to be given to employee, who is delinquent employee in above inquiry or inquiry is to be conducted in camera in Chamber. Admittedly, applicants were Enquiry Officer and Presenting Officer. They were conducting a regular departmental enquiry against complainant. Meaning thereby, charge was framed and the employee complainant was charged employee. Meaning thereby, prima facie, he was delinquent employee, for which charge was framed. Preliminary inquiry stage was passed. Thereafter, departmental enquiry was being conducted and when this enquiry was conducted this fuss was created. Who created this and what was the precipitating point was to be visualized and examined by Magistrate before summoning applicants, but casually impugned order of summoning for offence punishable under Section 3(1)(X) of the Act was passed. On above facts and circumstances, as apparently offence under Section 3(1)(X) of the Act was not made out, on the basis of evidence collected in inquiry by Magistrate concerned, hence this application merits to be allowed in part.

**Award based on non-rebuttal of documents by employer, is not justified***.*

*Madhyanchal Vidyut Vitaran Nigam Ltd. Vs. State of U.P.*

*LAWS(ALL) 2023 5 74 May 19, 2023 Writ-C No. 32520 Of 2016*

33. I have heard learned counsel for the parties and perused the record. I find that award of the Labour Court is based upon the fact that the workman had produced certain documents establishing his work in the Organization and, in the opinion of the Labour Court the Department could not rebut the same. Certain certificates as well as attendance register were considered by the Labour Court to arrive at a conclusion that the workman had been employed and worked in the Organization. However, I find that the Labour Court has not considered the documents filed by the Department, i.e. to say that mode and manner of appointing persons, the ban put on appointments in 1979, subsequent creation of the Department in 1991, affidavits filed by the Officers stating that they had never taken any work from the workman nor was any payment made by them to the workman nor did the Labour Court consider the cross-examination of the Officials whereby signatures on the Certificates were specifically denied by them. The Labour Court further failed to appreciate that for making an award for reinstatement and back wages with continuity in services, mere finding that oral termination was not according to law would not ipso facto lead to a conclusion that the workman should be reinstated with back wages and continuity in service. Neither there is any finding to the effect that the workman was not gainfully employed after 2006 nor did the Labour Court examine the period for which the workman allegedly rendered his services. In fact, the award is simply based upon alleged non-rebuttal by the Department as against the case set up by the workman, although I find that the Department by 'tooth and nail' opposed the claim of the workman by leading cogent evidence, both oral and documentary, but the same has not been given due consideration by the Labour Court.

In the facts and circumstances of the case, a consolidated and lump sum amount of compensation could have served the purpose to console the respondent, inasmuch as, in the counter affidavit filed in the year 2016, the age of the respondent no.4 was described as 53 years and, therefore, as of now, he must have attained the age of superannuation and in view of the same, it would not be just and proper for this Court to direct for reinstatement as reinstatement after attaining the age of superannuation would not be in accordance with law. For this reason also, impugned award requires modification in terms of granting just and proper compensation.

36. In view of the above facts and considering the ratio of aforesaid authorities cited at the Bar, the writ petition is allowed in-part. The impugned judgment and award dtd. 19/10/2015 published on 30/1/2016 passed by the respondent No.2-Presiding Officer, Labour Court, Firozabad is hereby modified and relief of reinstatement with continuity in service and back wages is hereby denied. However, in totality of the facts and circumstances of the case, award of Rs. 2,00,000/- as lumpsum compensation to the workman would meet the ends of justice.

**Punishing workman for charges without opportunity of defence is bad in law*.***

*K P Singh Vs. State Of U P.*

*Writ - C 1907 of 1988 April 12, 2019*

Once Tribunal found that certain incidents which were not subject matter of enquiry have been taken into consideration to impose punishment upon workman and punishment order amounts to colourable exercise, I find no justification on the part of Labour Court to uphold such an order. It is now well settled that an act and omission in respect whereto no charge-sheet has been issued and enquiry has not been conducted, a punishment cannot be passed. Such allegation(s) cannot be taken into consideration to punish a workmen. It amounts to punishing a person on an act and omission in respect whereto workmen had no opportunity of defence and in fact in respect whereto even Employer had not taken any proceedings to prove the charge and still workmen has been punished

In fact, above observations of Labour Court were sufficient to hold that dismissal order is bad in law. When a punishment order is found a colourable exercise, it goes to the root of validity of such punishment order and in such a case there would not have been any requirement to consider whether punishment commensurate to charge levelled against workman concerned, or excessive. Labour Court has awarded only Rs. 3500/- which in my view, cannot be said to be holistic, reasonable and adequate lumpsum compensation. Therefore, I modify impugned award and provide that Employer shall pay a lumpsum amount of Rs.1,25,000/- to petitioner in lieu of relief of reinstatement. Award of Labour Court dated 10.10.1986, impugned in the present writ petition is accordingly modified

**Award remitted for loss of confidence due to concealment of involvement in murder case.**

*Varun Beverages Ltd. Vs. State of U.P.*

*CMWP No. 26047 of 2021 Oct. 8, 2021*

Petitioner challenged the award on the ground that employer lost the confidence as workman managed to get the employment by concealing the fact of involvement in murder case. When Petitioner came to know through newspaper that he was punished by life imprisonment, management loss the confidence for concealment of such vital information from management. However, the Labour Court remitted the matter for giving opportunity to the management by adducing additional evidence before the Labour Court.

***Exparte* award without recording satisfaction regarding service of notice, stayed**

*Roche Diagnostic India Pvt. Ltd. Vs. State of U.P*.:

CMWP No. 10176 of 2021, July 6, 2021

Hon’ble High Court having noticed that *exparte* award was passed by Labour Court without recording a finding regarding sufficiency of service of notice, therefore, stayed the award.

**Direction to decide waiver application u/s.7-O of EPF&MP Act, 1952 by independent application of mind.**

*Pepsico India Holding Pvt. Ltd Vs. EPF Appellate Tribunal*

*WRIT - C No. - 8935 of 2021. October 01, 2021*

The petitioner challenged order dtd. 11/1/2021 passed by the appellate authority/EPF & MP Act passed u/s. 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, admitting the appeal of the petitioner subject to deposit of 50% of the dues. Shri Sunil Tripathi, learned counsel for the petitioner assailing the order dated 11/1/2021 contends that the petitioner is not liable to deposit any amount on filing of the appeal for two reasons. Firstly only conditional liability was fixed by the assessing authority /Assistant Provident Fund Commissioner, Employees Provident

The matter is remitted to the appellate authority with directions that the appellate authority/Employees Provident Fund Appellate Tribunal/CGIT, Nagar, Kanpur, shall decide the application for waiver of pre-deposit amount made by the petitioner upon independent application of mind and consistent with the observations made in this judgement and as per law. The petitioner shall be given an opportunity of hearing before any order is passed on the application for waiver made by the petitioner.

20. The writ petition is allowed to the extent indicated above

**Award u/s. 4-K, was stayed as establishment is covered under Working Journalist Act.**

*Living Media India Ltd. Vs. State of U.P.,*

CMWP No. 16981 of 2022, June 14, 2022

Hon’ble High Court after noticing that award by Labour Court was delivered after 17 years of disengagement by giving relief of reinstatement with full back wages, on a reference u/s. 4-K of U.P. Industrial Disputes Act, 1947. Petitioner objected that as establishment is governed by Working Journalist (Conditions of Service) & Misc. Provisions Act, 1955, the award cannot be passed. Hon’ble High Court stayed the award on the condition of reinstatement of workman.

**DLC has no jurisdiction to adjudicate dispute u/s. 17(1) of Working Journalist Act.**

*Indian Express Pvt. Ltd Vs. UOI* Writ-C No. 659 Of 2023, February 21, 2023

The issue in this petition is, "whether Prescribed Authority under Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 can adjudicate a claim filed by workmen under Sec. 17(1) of Act, 1955?"

In the present case, controversy arose before Prescribed Authority that, whether or not employer has power to deduct the amount as well as whether or not deduction was legally permissible and for that parties before Prescribed Authority have exchanged pleadings and led oral evidence also. Prescribed Authority has entered into arena of disputed questions and considered pleadings and oral evidence and recorded a finding that since undisputedly publication was regular and respondents-workmen were working regularly, therefore, deduction was illegal or not permissible and proceeded to pass order against petitioner and in favour of respondents-workmen. Since Prescribed Authority has entered into arena of dispute to determine legality of deduction, therefore, it has acted beyond its jurisdiction provided under Sec. 17(1) of Act, 1955 and committed legal error by not making reference to Labour Court. Hon’ble High Court directed Deputy Labour Commissioner to issue reference order u/s. 17(2) in accordance with law.

**Reference order relating to Medical Representatives under UPID Act, stayed**

*Sanofi India Ltd. Vs. State of U.P*.

Writ-C No. 40371 of 2023 November 11, 2023

Hon’ble High Court, Allahabad in a writ petition challenging the reference order issued by Deputy Labour Commissioner under UPID Act stayed the proceeding before Labour Court, on the ground (i) Medical Representatives are not covered within the purview of “deemed workmen” under UPID Act, as per provisions of Sales Promotion Employees (Condition of Service) Act, 1976, (ii) In this case Scientific Sales Executive being employed in managerial & administrative capacity is not covered under the definition of workman.

**Labour Court has no jurisdiction when territorial jurisdiction notified by agreement**

*TV Today Network Ltd. Vs. State of U.P***. ,**

CMWP No. 35913 of 2023, Oct. 17, 2023

Hon’ble High Court relying on the judgment of SC in case of EST Carriers Vs. Frankfinn Aviation Services Pvt. Ltd. [(2020) 12 SCC 667] stayed the proceeding before Labour Court on the ground that when agreement specifically mentioned that agreement is subject to exclusive jurisdiction of court at Delhi, the Labour Court, Noida has no jurisdiction to entertain the case.

**Reference order stayed as individual worker has no right to raise a dispute for any matter not covered u/s. 2-A of UPID Act, 1947.**

*The Indian Express Pvt. Ltd. Vs. Union of India,*

CMWP No. 21577 of 2023*,* July 17, 2023

Petitioner challenged the reference order on the ground that as per section 3 of Working Journalist Act, Industrial Disputes Act shall apply to Working Journalist. As per section 2A of Industrial Disputes Act individual worker has no right to raise any dispute other than discharge, dismissal & termination. In this case the Working Journalist raised the dispute regarding deduction from wages, therefore Additional Labour Commissioner has no jurisdiction to refer the dispute raised by individual worker. Though Labour Court framed the issue regarding maintainability of the reference order but held that this issue will be decided at the final stage. Hon’ble High Court considering the submission of the newspaper establishment stayed the effect & operation of the reference order.

**For modifying punishment Labour Court has to record a finding that punishment is wholly & shockingly disproportionate.**

*Hindalco Industries Ltd. Vs. State of U.P*.

CMWP No. 32446 of 2019, Jan. 18, 2024

Labour Court after despite recording a finding that enquiry is fair & proper, modified the punishment of dismissal to stoppage of two annual increment and with 20% back wages to the workman. The Hon’ble High Court relying on the judgment of Apex Court held that for modifying the punishment after holding enquiry as fair & proper, Labour Court has to record a subjective satisfaction that punishment in their view is wholly & shockingly disproportionate**.** In this case the Labour Court did not record any subjective satisfaction that punishment of dismissal is disproportionate to the charges levelled. High Court therefore allowed the petition of employer challenging the award and dismissed the petition of worker justifying the award.

**H.C. stays order of BOCW authority for not recording satisfaction for service of notice**

*PCP International Ltd. Vs. State of U.P*.

*CMWP No. 2675 of 2024, Feb. 21, 2024*

PCP International challenged the *exparte* order passed by BOCW Authority under BOCW Cess Act, 1996 on the ground that no notice was served on the Petitioner. Hon’ble High Court observing that authority did not record any satisfaction regarding service of notice on the Petitioner before proceeding *exparte.* Hon’ble High Court on this ground stayed the recovery.

**Award for reinstatement, stayed as requirement of S.6-N was complied.**

*Shree Arya Mahila Hitkarini Parishad Vs. State of U.P***.**

*CMWP No. 7120 of 2024 March 3, 2024*

Hon’ble High Court stayed the award of Labour Court giving relief of reinstatement with back wages on the ground that once Petitioner retrenched after complying the procedure prescribed u/s. 6-N of the UPID Act. Labour Court cannot pass order for reinstatement for non-compliance of provisions of re-employment as the issue of re-employment was not referred for adjudication.

**Order against charitable hospital, for payment of gratuity stayed by H.C.**

*Shree Ram Luxmi Narain Marwari Hindu Hospital Vs. State of U.P.*

*CMWP No. 18687 of 2024, May 29, 2024*

Petitioner challenged the order of Controlling Authority & Appellate Authority on the ground that charitable hospital is not covered u/s. 1 of the Payment of Gratuity Act as charitable hospital is neither a factory or Shops & Commercial Establishment nor Central Government has issued any notification for coverage under the Payment of Gratuity Act. As such the order passed by the Controlling Authority & Appellate Authority is without jurisdiction. Hon’ble High Court directed that amount of gratuity deposited for filing appeal shall be subject to outcome of this writ petition.

**Order restraining APFC for coercive measure, until waiver application is disposed**.

*M/s. Al Madeena Foundation Vs. UOI*

*CMWP No*. – *18266 of 2024, May 27, 2024*

Petitioner challenged the order of Assistant Provident Fund Commissioner passed u/s. 7A by filing appeal u/s. 7-I along with stay & waiver application u/s. 7-O of EPF&MP Act. Submission of the Petitioner is that Appellate Authority, due to additional charge of three Labour Courts, is not getting time to do the hearing in this matter and on the other hand Recovery Officer is exerting pressure for recovery. Hon’ble High Court under the circumstances restrained Recovery Officer from taking any coercive measure against the Petitioner, until stay & waiver application is decided.