IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 22nd OF APRIL, 2024

MISC. PETITION No. 5093 of 2022

BETWEEN:-

DAINIK BHASKAR THROUGH ITS AUTHORISED REPRESENTATIVE RAJKUMAR SAHU S/O. SHIVNARAYAN SAHU A/A 36 R/O. 6, DWARKA SADAN PRESS COMPLEX MAHARAN PRATAP NAGAR ZONE-1, DISTT. BHOPAL (M.P.) (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LABOUR DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)**
2. **DEPUTY LABOUR COMMISSIONER, BHOPAL E BLOCK OLD SECRETARIAT , BHOPAL (MADHYA PRADESH)**
3. **ADDITIONAL SECRETARY, LABOUR DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
4. **MANISH KUMAR DUBEY S/O R.P. DUBEY R/O INFRONT OF SAIBABA MANDIR, MALVIYAGANJ ITARSI**

(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)

MISC. PETITION No. 2053 of 2020

BETWEEN:-

DAINIK BHASKAR THR. ITS AUTHORISED REPRESENTATIVE RAJKUMAR SAHU S/O SHIVNARAYAN SAHU A/A 36 6 DWARKA SADAN PRESS COMPLEX MAHARANA PRATAP NAGAR ZONE 1 (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. PRINCIPAL SECRETARY LABOUR DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **DEPUTY LABOUR COMMISSIONER BHOPAL E BLOCK OLD SECRETARAIT BHOPAL (MADHYA PRADESH)**

3. **ADDITIONAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

4. **SANTOSH KUMAR PURI S/O LAL PURI BADKUL COLONY OLD ITARSI (MADHYA**

PRADESH)

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)
(RESPONDENT NO.4 BY SHRI AISHWARYA SAHU - ADVOCATE)

MISC. PETITION No. 2124 of 2020

BETWEEN:-

DAINIK BHASKAR THR. ITS AUTHORISED REPRESENTATIVE RAJKUMAR SAHU S/O SHIVNARAYAN SAHU A/A 36 6 DWARKA SADAN PRESS COMPLEX MAHARANA PRATAP NAGAR ZONE 1 BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. PRINCIPAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **DEPUTY LABOUR COMMISSIONER BHOPAL E BLOCK OLD SECRETARAIT BHOPAL (MADHYA PRADESH)**

3. **ADDITIONAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

4. **JAIDEEP RAGHUWANSHI S/O RAMSHANKAR RAGHUWANSHI R/O**

NEWASKAR BASERA, GINNI COMPOUND, MEENAKSHI CHOWK, (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)
(RESPONDENT NO.4 BY SHRI AISHWARYA SAHU - ADVOCATE)

MISC. PETITION No. 2509 of 2020

BETWEEN:-

DAINIK BHASKAR THR. ITS AUTHORISED REPRESENTATIVE RAJKUMAR SAHU S/O SHIVNARAYAN SAHU 6 DWARKA SADAN PRESS COMPLEX MAHARANA PRATAP NAGAR ZONE 1 BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. PRINCIPAL SECRETARY LABOUR DEPT. MANTRALAYA VALLABH BHAWAN (MADHYA PRADESH)**

2. **DEPUTY LABOUR COMMISSIONER BHOPAL E BLOCK OLD SECRETARAIT BHOPAL (MADHYA PRADESH)**

3. **ADDITIONAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

4. YASHWANT GAWAHDE S/O SHANKARLAL GAWAHDE 1432 PHASE 2 SHIVAJINAGAR RASULIYA (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)

MISC. PETITION No. 2837 of 2020

BETWEEN:-

DAINIK BHASKAR THR. ITS AUTHORISED REPRESENTATIVE RAJKUMAR SAHU S/O SHIVNARAYAN SAHU A/A 36 6 DWARKA SADAN PRESS COMPLEX MAHARANA PRATAP NAGAR ZONE 1 (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THR. PRINCIPAL SECRETARY LABOUR DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. DEPUTY LABOUR COMMISSIONER E BLOCK OLD SECRETARIAT DISTT-BHOPAL (MADHYA PRADESH)

3. ADDITIONAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

4. PRAKASH KUMAR MALVIYA S/O GENDALAL MALVIYA R/O GANDHINAGAR, ITARSI (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)
(RESPONDENT NO.4 BY SHRI AISHWARYA SAHU - ADVOCATE)

MISC. PETITION No. 3316 of 2020

BETWEEN:-

DAINIK BHASKAR THROUGH ITS AUTHORISED REPRESENTATIVE RAJKUMAR SAHU S/O SHIVNARAYAN SAHU AGED 36 YEAR 6, DWARKA SADAN PRESS COMPLEX MAHARAN PRATAP NAGAR, ZONE 1 BHOPAL (M.P.) (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY MANTRALAYA, VALLABH BHAWAN, BHOPAL M.P. (MADHYA PRADESH)

2. DEPUTY LABOUR COMMISSIONER BHOPAL E BLOCK OLD SECRETARIAT (MADHYA PRADESH)

3. ADDITIONAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

4. BHUPENDRA SHARMA S/O

G.S.SHARMA RAJHARSH COLONY KOLAR ROAD (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)
(RESPONDENT NO.4 BY SHRI RAJESH KUMAR SONI - ADVOCATE)

MISC. PETITION No. 1719 of 2021

BETWEEN:-

DANIK BHASKAR S/O SHIVNARAYAN SAHU, AGED ABOUT 36 YEARS, OCCUPATION: THRO. ITS AUTHORISED REPRESENTATIVE RAJKUMAR SAHU 6 DWARKA SADAN PRESS COMPLEX MAHARAN PRATAP NAGAR ZONE 1 (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THRO. PRINCIPAL SECRETARY LABOUR DEPARTMENT MANTRALAYA VALLABH BHAWAN (MADHYA PRADESH)**

2. **DEPUTY LABOUR COMMISSIONER LABOUR DEPARTMENT E BLOCK OLD SECRETARIAT, BHOPAL (MADHYA PRADESH)**

3. **ADDITIONAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)**

4. KESHAV ANAND DUBEY S/O LATE SHRI S.K. DUBEY OCCUPATION: NOT MENTION 02, RAGHA MADHAV NAGAR, HOSHANGABAD (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)
(RESPONDENT NO.4 BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH MS.PANKHUDI VISHWAKARMA - ADVOCATE)

MISC. PETITION No. 1723 of 2021

BETWEEN:-

DAINIK BHASKAR THR. AUTHORISED REPRESENTATIVE RAJKUMAR SAHU S/O SHIVNARAYAN SAHU 6 DWARKA SADAN PRESS COMPLEX MAHARAN PRATAP NAGAR ZONE 1 (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. STATE OF M.P. THR. PRINCIPAL SECRETARY LABOUR DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL MP (MADHYA PRADESH)

2. DEPUTY LABOUR COMMISSIONER LABOUR DEPARTMENT E BLOCK OLD SECRETARIAT, BHOPAL (MADHYA PRADESH)

3. ADDITIONAL SECRETARY LABOUR DEPARTMENT

VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)

4. **AJAY KUMAR LOKHANDE S/O GIRDHARI LOKHANDE, AGED ABOUT 43 YEARS, OCCUPATION: NOT MENTION LOHA BRIDGE ROAD, SHIVAJI WARD, KOTHIBAZAAR, BETUL (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)
(RESPONDENT NO.4 BY SHRI A.S.HUSSAIN - ADVOCATE)

MISC. PETITION No. 4840 of 2021

BETWEEN:-

MANAGING DIRECTOR PATRIKA (RAJASTHAN PATRIKA PVT. LTD.) THR. ITS AUTHORISED REPRESENTATIVE AJAY SHARMA S/O TIKAM CHAND SHARMA AGED ABOUT 47 YEARS 3RD FLOOR, CHINARLNCUBE BUSINESS CETRE CHINAR CITY MALL, HOSHANGABAD ROAD, BHOPAL/PATRIKA 1ST FLOOR DIXIT PRIDE NEAR TAYAB ALI PETROL PUMP NAPIER TOWN (MADHYA PRADESH)

.....PETITIONER

(BY SHRI BRIAN DA-SILVA – SENIOR ADVOCATE WITH SHRI SARABVIR SINGH OBEROI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. PRINCIPAL SECRETARY LABOUR DEPARTMENT MANTRALAYA, VALLABH BHAWAN (MADHYA**

PRADESH)

2. **DEPUTY LABOUR COMMISSIONER BHOPAL DIVISION E BLOCK OLD SECRETARIAT BHOPAL (MADHYA PRADESH)**

3. **ADDITIONAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

4. **YOGESH MALVIYA S/O P.C.MALVIYA R/O NEAR KAPUR GARDEN PURANPURA VIDISHA (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)
(RESPONDENT NO.4 BY SHRI RAJESH KUMAR SONI - ADVOCATE)

MISC. PETITION No. 4493 of 2022

BETWEEN:-

DAINIK BHASKAR THROUGH ITS AUTHORISED REPRESENTATIVE RAJKUMAR SAHU S/O SHIVNARAYAN SAHU AGED ABOUT 36 YEARS 6 DWARKA SADAN PRESS COMPLEX MAHARANA PRATAP NAGAR ZONE 1 (M.P.) DISTRICT BHOPAL (M.P.) (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GIRISH PATWARDHAN – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI SIDDHANT KOCHAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY**

LABOUR DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)

2. **DEPUTY LABOUR COMMISSIONER BHOPAL E BLOCK OLD SECRETARAIT BHOPAL (MADHYA PRADESH)**

3. **ADDITIONAL SECRETARY LABOUR DEPARTMENT VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)**

4. **AJAY GOSWAMI S/O PANCHAMPURI GOSWAMI R/O HOUSE OF PREETAM SONI NEAR HOUSE OF SONU INFRONT OF SHAKTI MATA MANDIR COLLECTORATE ROAD KOTHI BAZAAR HOSHANGABAD (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)
(RESPONDENT NO.4 BY SHRI AISHWARYA SAHU - ADVOCATE)

These petitions coming on for admission this day, the court passed the following:

ORDER

1. By this common order, M.P.No.s 5093/2022, 2053/2020, 2124/2020, 2509/2020, 2837/2020, 3316/2020, 1719/2021, 1723/2021, 4840/2021 and 4493/2022 shall be disposed off. It is made clear that arguments were advanced in M.P. No. 5093/2022, 1719/2021 and 4840/2021 only and it was submitted that the other misc. petitions would be covered by the arguments advanced in the aforesaid three petitions.

2. For the sake of convenience, the facts of M.P. No. 5093/2022 shall be considered.

3. This petition under Article 226 of Constitution of India has been filed seeking the following relief(s) :

> (i) The Hon'ble Court may kindly be pleased to quash impugned order dated 24.07.2021 (Annexure P/16) passed by Labour Court, Hoshangabad (MP) and all consequential recovery proceedings, in the interest of justice.
>
> (ii) That, Hon'ble Court may kindly be pleased to remand the matter back to the Labour Court to adjudicate the matter afresh after appreciating the evidence on record including the issue of undertaking given under clause 20 (J) of the recommendations, the issue of legality of the order of reference, classification of the news-paper establishment, non-compliance of the mandatory procedure culled out under the rules and legality of the reference order.
>
> (iii) Any other relief which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be issued in favour of the Petitioner along with cost of the petition.

4. It is the case of the petitioner, that the respondent filed a statement of claim under Section 17(2) of The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provisions Act, 1955 (in short Act 1955) pleading inter alia that in the month of June, 2009, he was appointed on the post of Sub-Editor and thereafter he continued to work till November 2016 as DNE. He was

getting Rs. 20,000/- per month, whereas as per the recommendations of Majithia Wage Board, he was entitled for monthly wages of Rs. 41,000/-. Recommendations of Majithia Wage Board had come into force w.e.f. 11-11-2011. The respondent is entitled for different of pay scale i.e., Rs. 21,95,423.

5. The petitioner filed its written statement and denied the claim of the respondent. It was claimed that the Dy. Labour Commissioner had no jurisdiction to pass the order and reference can be made only by the State Govt. Further, the application which was filed before Dy. Labour Commissioner was not in accordance with form C because no 15 days prior notice was given to the Petitioner. The reference has not been made by the State Govt. in exercise of suomotu powers. Further more, in the light of Clause 20(j) of recommendations of Majithia Wage Board, the respondent has given his declaration that he is satisfied with the wages which he is getting. Further, only Industrial Tribunal has jurisdiction to try the reference. The reference is barred by time for the reason that the respondent is claiming arrears from the year 2011 whereas the application was filed in the year 2016.
6. The Labour Court, by the impugned order has allowed the reference and has directed the petitioner to pay Rs. 9,82,751/- along with Rs. 22,031/- towards interim relief.
7. The impugned order passed by the Labour Court has been challenged by the Petitioner by filing the present petition. The submissions raised by the Counsel for the petitioner can be summarized in following categories :

(i) There is no pleading in the statement of claim regarding category in which the respondent would fall;

(ii) There is no pleading in the statement of claim regarding classification of Hoshangabad Unit;

(iii) Once, the respondent himself had given a declaration that he is satisfied with the wages which he is getting, then he is estopped from claiming higher wages as per recommendations of Majithia Wage Board;

(iv) No issue regarding declaration given by respondent under Clause 20(j) of Recommendation of Majithia Wage Board was framed and inspite of that findings have been recorded by the Labour Court;

(v) The State Govt. had made reference under Section 17(2) of Act, 1955 as well as under Section 10 and 12 of Industrial Disputes Act, and since, it was not the case of the respondent that he has been dismissed, therefore, no reference was maintainable before Labour Court;

(vi) That "wages" fall under Schedule III of Industrial Disputes Act, therefore, Industrial Tribunal had jurisdiction to decide the reference.

(vii) No prior notice was given to the Petitioner in the light of Form C of The Working Journalists (Conditions of Service) And Miscellaneous Provisions Rules, 1955.

No issue regarding declaration given by respondent under Clause 20(j) of Recommendation of Majithia Wage Board was framed and inspite of that findings have been recorded by the Labour Court

8. It is submitted by Counsel for the Petitioner, that although the petitioner had specifically pleaded in its written statement that the respondent has executed a declaration in the light of Clause 20(j) of Recommendations

of Majithia Wage Board, but no issue in that regard was framed, therefore, not only, the petitioner was taken by surprise by the Labour Court, but has given a finding in respect of an aspect for which no issue was framed. It is further submitted that initially, the respondent had denied his signatures on the declaration Ex. D.2, but when the petitioner filed an application for sending the signatures of the respondent to a handwriting expert, then he took a somersault and claimed that declaration Ex. D.2 contains his signatures, but his signatures were obtained by misrepresentation. It is submitted that in order to set up the case of misrepresentation, the Plaintiff has to plead in accordance with provisions of Order 6 Rule 4 CPC. There is no whisper of declaration in the statement of claim and for the first time in the re-examination, the respondent claimed that his signatures were obtained by misrepresentation, therefore, it is clear that the respondent has failed to prove that his signatures were obtained by misrepresentation. It is further submitted that in the light of provisions of Section 101 and 102 of Evidence Act, the burden to prove misrepresentation was on the respondent which has not been discharged by the respondent. To buttress his contentions, the Counsel for the Petitioner has relied upon the judgment passed by Supreme Court in the case of **General Manager, Electrical, Rengali Hydro Electric Project v. Giridhari Sahu,** reported in **(2019) 10 SCC 695,** as well as order passed by a Co-ordinate Bench of this Court in the case of **Nav Dunia (a unit of Jagran Prakashan Ltd.) Vs. Praveen Dixit** decided on 14.11.2019 in **M.P. No. 3979/2019 and other connected matters.**

9. Considered the submissions made by Counsel for the Petitioner.

10. It is an undisputed fact, that respondent had not pleaded about declaration in his statement of claim but it was the defence of the Petitioner. It is equally true that no issue was framed with regard to declaration made by respondent under Clause 20(j) of Majithia Wage Board. Now, the only question for consideration is that when the Petitioner itself had pleaded that the respondent is bound by his declaration then whether non framing of issue in this regard would vitiate the findings recorded by the Labour Court.

11. Before considering the aforesaid aspect, this Court would like to consider the provisions of Order 6 Rule 4 CPC, Section 101, 102 and 111 of Evidence Act. Order 6 Rule 4 CPC, Section 101,102 and 111 of Evidence Act reads as under :

> **Order 6 Rule 4. Particulars to be given where necessary**.— In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.
>
> **101. Burden of proof.**—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.
>
> When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.—The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

111. Proof of good faith in transactions where one party is in relation of active confidence.—Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

12. From plain reading of Order 6 Rule 4 CPC and Sections 101, 102 of Evidence Act, it is clear that burden to prove misrepresentation is on the person who would fail, if no evidence at all is given on either side. Thus, when the petitioner had relied upon the declaration given by the respondent in the light of clause 20(j) of recommendations of Majithia Wage Board, then burden was on the respondent to prove that it was obtained by misrepresentation. However, the above mentioned general rule of Law is not without exception. Exception to the general law is Section 111 of Evidence Act, which states that where there is a question of good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, burden of proving good faith of the transaction is on the party who is in a position of active confidence. The petitioner is an employer, and therefore, certainly, it is in a position of active confidence. Thus, the burden was on the Petitioner to prove the good faith of the transaction. Therefore, the explanation given by the respondent that his signatures on the declaration were obtained by misrepresenting that his signatures are required for implementation of

Majithia Wage Board, then it is clear that the respondent had sufficiently discharged his burden, and the burden was on the petitioner to prove that not only the recommendations of Majithia Wage Board were specifically told to the respondent, but the respondent was also apprised of difference in wages i.e., wages which were being drawn by the respondent and the wages as per the recommendations of Majithia Wage Board. There is nothing on record to show that even the recommendations of Majithia Wage Board were made known to the respondent. Thus, the initial burden which was on the Petitioner in the light of Section 111 of Evidence Act was not discharged by it and the Petitioner failed to prove that the declaration was given by the respondent after having understood the pros and cons of such declaration and there was no misrepresentation.

13. The Supreme Court in the case of **Anil Rishi v. Gurbaksh Singh,** reported in **(2006) 5 SCC 558** has held as under :

> **19.** There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: (*i*) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (*ii*) to make that of establishing a proposition as against all counter-evidence; and (*iii*) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is inflexible. In

terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

14. However, the burden of proof can be reversed by taking recourse to Section 111 of Evidence Act. In the case of **Anil Rishi (Supra)**, it has been held by Supreme Court as under :

> 11. The fact that the defendant was in a dominant position must, thus, be proved by the plaintiff at the first instance.
>
> 12. Strong reliance has been placed by the High Court on the decision of this Court in *Krishna Mohan Kul* v. *PratimaMaity*. In that case, the question of burden of proof was gone into after the parties had adduced evidence. It was brought on record that the witnesses whose names appeared in the impugned deed and which was said to have been created to grab the property of the plaintiffs, were not in existence. The question as regards oblique motive in execution of the deed of settlement was gone into by the Court. The executant was more than 100 years of age at the time of alleged registration of the deed in question. He was paralytic and furthermore his mental and physical condition were not in order. He was also completely bedridden and though his left thumb impression was taken, there was no witness who could substantiate that he

had put his thumb impression. It was on the aforementioned facts, this Court opined: (SCC p. 474, para 12)

> "*12*. … The onus to prove the validity of the deed of settlement was on Defendant 1. When fraud, misrepresentation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the court watches with jealousy all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation, the law presumes everything against the transaction and the onus is cast upon the person

holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position."

13. This Court in arriving at the aforementioned findings referred to Section 111 of the Evidence Act which is in the following terms:

"111. *Proof of good faith in transactions where one party is in relation of active confidence.*—Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence."

14. But before such a finding is arrived at, the averments as regards alleged fiduciary relationship must be established before a presumption of undue influence against a person in position of active confidence is drawn. The factum of active confidence should also be established.

15. Section 111 of the Evidence Act will apply when the bona fides of a transaction is in question but not when the real nature thereof is in question. The words "active confidence" indicate that the relationship between the parties must be such that one is bound to protect the interests of the other.

16. Thus, point for determination of binding interests or which are the cases which come within the rule of active confidence would vary from case to case. If the plaintiff fails to prove the existence of the fiduciary relationship or the position of active

confidence held by the defendant-appellant, the burden would lie on him as he had alleged fraud. The trial court and the High Court, therefore, in our opinion, cannot be said to be correct in holding that without anything further, the burden of proof would be on the defendant.

The Supreme Court in the case of **Ladli Parshad Jaiswal v. Karnal Distillery Co. Ltd.,** reported in **(1964) 1 SCR 270** has held as under :

23. The pleading which was regarded as one of undue influence also suffers from a lack of particulars How the plaintiff took advantage of his position as a person, in possession of the assets of the Company and by what device he compelled the defendants to submit to his will has not been stated. Section 16 of the Indian Contract Act, which incorporates the law relating to undue influence in its application to contracts is but a particularisation of a larger principle. An transactions procured in the manner set out therein, are regarded as procured by the exercise of undue influence Section 16 of the Contract Act provides:

"(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties?re such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872."

24. The doctrine of undue influence under the common law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence spiritual and temporal. The doctrine applies to acts of bounty as well as be of other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another. The Indian enactment is founded substantially on the rules of English common law. The first sub-section of Section 16 lays down the principle in general terms. By sub-section (2) a presumption arises that a person shall be deemed to be in a position to dominate the will of another if the conditions set out therein are fulfilled. Sub-section (3) lays

down the conditions for raising a rebuttable presumption that a transaction is procured by the exercise of undue influence. The reason for the rule in the third sub-section is that a parson who has obtained an advantage over another by dominating his will, may also remain in a position to suppress the requisite evidence in support of the plea of undue influence.

25. A transaction may be vitiated on account of undue influence where the relations between the parties are such that one of them is in a position to dominate the will of the other and he uses his position to obtain an unfair advantage over the other. It is manifest that both the conditions have ordinarily to be established by the person seeking to avoid the transaction : he has to prove that the other party to a transaction was in a position to dominate his will and that the other party had obtained an unfair advantage by using that position. Clause (2) lays down a special presumption that a person is deemed to be in a position to dominate the will of another where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other or where he enters into a transaction with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress. Where it is proved that a person is in a position to dominate the will of another (such proof being furnished either by evidence or by the presumption arising under sub-s, (2) and he enters into a transaction with that other person which on the face of it or on the evidence adduced, appears to be

> unconscionable the burden of proving that the transaction was not induced by undue influence lies upon the person is a position to dominate the will of the other. But sub-section (3) has manifestly a limited application : the presumption will only arise if it is established by evidence that the party who had obtained the benefit of a transaction was in a position to dominate the will of the other and that the transaction is shown to be unconscionable. If either of these two conditions is not fulfilled the presumption of undue influence will not arise and burden will not shift.

Thus, where a person holds a real or apparent authority over the other or where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. Similarly, Section 16 of Contract Act defines undue influence and provides that "A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. A person is deemed to be in a position to dominate the will of another-(*a*) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or (*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason

of age, illness, or mental or bodily distress. Therefore, where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other."

15. Thus, the burden that the declaration was given voluntarily by the respondent is upon the petitioner. Although it is the stand of the Petitioner that a public notice was affixed on the notice board that the employee has to submit a declaration in the light of the clause 20(j) of Majithia Wage Board, but the Petitioner has miserably failed to prove that the employees were informed about the recommendations of Majithia Wage Board and only after understanding the same, the respondent had voluntarily signed the declaration form. There is nothing on record that even the recommendations of Majithia Wage Board were also affixed on the notice board, so that the respondent and others can go through the same. The Petitioner being the employer was undoubtedly in a dominating position as it has every power to terminate the service or regulate the service conditions of the respondent.
16. Under these circumstances, this Court is of the considered opinion, that the Petitioner has miserably failed to discharge its burden to prove that the respondent had voluntarily executed the declaration under Clause 20(j) of Majithia Wage Board.
17. Further, it was the defence of the Petitioner that a declaration under Clause 20(j) of Majithia Wage Board was given by the respondent. Therefore, it was aware of the real *lis* between the parties. The petitioner

did not raise any objection with regard to non framing of issue before the Labour Court and even led evidence with regard to submission of declaration by respondent under Clause 20(j) of Majithia Wage Board. The Petitioner cross examined the respondent on the issue of declaration by respondent under Clause 20(j) of Majithia Wage Board. Thus, no prejudice was caused to the petitioner. It is well established principle of law that when a party to the suit was aware of the controversy involved in the suit and in fact it was defence taken by the Petitioner itself then non-framing of issue becomes insignificant. The Supreme Court in the case of **Sri Gangai Vinayagar Temple v. Meenakshi Ammal,** reported in **(2015) 3 SCC 624** has held as under :

> 16.1……There is no gainsaying that where parties are aware of the rival cases the failure to formally formulate an issue fades into insignificance, especially when it is prominently present in connected matters and extensive evidence has been recorded on it without demur.

18. Thus, it is held that once it was the Petitioner who raised a defence in its written statement, cross-examined the respondent on the said issue and also led evidence, then it cannot be said that non-framing of issue with regard to effect of declaration under Clause 20(j) of Majithia Wage Board had prejudiced it. Even otherwise, no application was filed by the Petitioner before the Labour Court for framing additional issue. Under these circumstances, this Court is of the considered opinion, that non-framing of issue with regard to declaration given by the respondent under Clause 20(j) of Majithia Wage Board became insignificant and would not

vitiate the proceedings. Therefore, this question is answered in **negative** and against the Petitioner.

Whether the respondent after giving a declaration that he is satisfied with the wages which he is getting, is estopped from claiming higher wages as per recommendations of Majithia Wage Board ?

19. The recommendations made by Majithia Wage Board were challenged before the Supreme Court in the case of **ABP (P) Ltd. Vs. Union of India** reported in **(2014) 3 SCC 327**. The recommendations were upheld by Supreme Court and after considering the submissions of the employers, it was held as under :

> **73.** Accordingly, we hold that the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India.

20. Clause 20(j) of Majithia Wage Board reads as under :

> **20. Fixation of Initial wage in the revised scale –** The initial wage of an employee in the revised scale shall be fixed in the following manner :
>
> a)……
>
> j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. **However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for**

retaining his existing pay scale and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments.

21. The whole controversy lies in Clause 20(j) of recommendations of Majithia Wage Board. The moot question for consideration is that whether a person who was drawing lesser pay scale can waive his right to receive the higher pay scale as recommended by Majithia Wage Board or not?

22. The Supreme Court in the case of **Avishek Raja Vs. Sanjay Gupta** reported in **(2017) 8 SCC 435** has held as under :

> 26. Insofar as the highly contentious issue of Clause 20(*j*) of the Award read with the provisions of the Act is concerned, it is clear that what the Act guarantees to each "newspaper employee" as defined in Section 2(*c*) of the Act is the entitlement to receive wages as recommended by the Wage Board and approved and notified by the Central Government under Section 12 of the Act. The wages notified supersedes all existing contracts governing wages as may be in force. However, the legislature has made it clear by incorporating the provisions of Section 16 that, notwithstanding the wages as may be fixed and notified, it will always be open to the employee concerned to agree to and accept any benefits which is more favourable to him than what has been notified under Section 12 of the Act. Clause 20(*j*) of the Majithia Wage Board Award will, therefore, have to be read and understood

in the above light. The Act is silent on the availability of an option to receive less than what is due to an employee under the Act. Such an option really lies in the domain of the doctrine of waiver, an issue that does not arise in the present case in view of the specific stand of the employees concerned in the present case with regard to the involuntary nature of the undertakings allegedly furnished by them. The dispute that arises, therefore, has to be resolved by the fact-finding authority under Section 17 of the Act, as adverted to hereinafter.

27. In any event having regard to the legislative history and the purpose sought to be achieved by enactment of the Act i.e. to provide the minimum if not a fair wage to newspaper employees, the ratio of the pronouncement in *Bijay Cotton Mills Ltd.* v. *State of Ajmer*, holding wages notified under the Minimum Wages Act, 1948 to be non-negotiable would squarely govern the wages notified under the present Act. Para 4 of the Report in *Bijay Cotton Mills Ltd.* which deals with the above issue is extracted hereinbelow for specific notice: (AIR p. 35)

> "*4*. It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the directive principles of State policy embodied in Article 43 of our Constitution. It is well

known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed in that convention were embodied in the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions. (Vide *South India Estate Labour Relations Organisation* v. *State of Madras*.)

If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, *it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable*. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness are willing to work on lesser wages."

(emphasis supplied)

23. A Division Bench of this Court in the case of **M/s Rajasthan Patrika Pvt. Ltd. Vs. State of M.P. and others** decided on **18-7-2019 in W.P. No. 17859 of 2016** has held as under :

(10) A careful reading of Para-26 of Avishek Raja (supra) leaves no room for any doubt that after taking into account Section 2(e), Section 12 & Section 16 of WJ Act, the Apex Court poignantly held that the wages cannot be less favourable to the employee other than that is payable under

> Section 12 of the Act. In clear terms, it was held that Clause 20(j) of Majithia Wage Board Award needs to be read and understood in the aforesaid light. In this view of the matter, in our opinion, this cannot be doubted that claim arising of Majithia Wage Board' Award preferred by employees of News-paper Establishment needs to be examined as per the mechanism prescribed under Section 17 of the WJ Act.

24. Against the aforesaid order, a review petition No. 1076/2019 was filed which too was dismissed. Against the aforesaid orders, S.L.P. (Civil) Diary No. 832/2021 was filed, which has been dismissed by Supreme Court by order dated 8-2-2021.

25. Thus, it is clear that clause 20(j) of Recommendations of Majithia Wage Board has to be interpreted that if an employee is drawing the wages, which is favorable to him i.e., higher than what has been prescribed by Majithia Wage Board, then he can retain the same or in other words, the employer cannot reduce the pay scale in the light of the recommendations of Majithia Wage Board but clause 20(j) of recommendation of Majithia Wage Board cannot be interpreted that the employer can ignore the recommendations by obtaining a declaration from an employee to the effect that he is satisfied with lower pay scale, although he is entitled for higher pay scale. This interpretation would be in conformity with the provisions of Article 23 of Constitution of India which reads as under :

> **23. Prohibition of traffic in human beings and forced labour**.—(1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any

> contravention of this provision shall be an offence punishable in accordance with law.
>
> (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

The question is that by putting undue influence because of dominating position, if an employer compels an employee to work on a lesser wages then the minimum wages as prescribed under Minimum Wages Act or under the Recommendations of Pay Commission or Wage Board, whether it would amount to *Begar* or not?

Begar is generally understood as compelling a labourer to work without renumeration but the word *Begar* cannot be given a narrower meaning. The Supreme Court in the case of **State of Gujarat v. Hon'ble High Court of Gujarat,** reported in **(1998) 7 SCC 392** has held as under :

> **84.** The word "begar" is of Indian origin and is well understood in ordinary parlance. <u>It is compulsory or involuntary labour with or without payment</u>…….
>
> (Underline supplied)

26. Similarly, if an employer pays less than the Minimum Wages, then such an act of the employer would be punishable under Section 22 of Minimum Wages Act. Thus, if the contention of the Petitioner, that if a declaration has been made by an employee under Clause 20(j) of Recommendation of Majithia Wage Board and agrees to work on a lesser

pay than what was recommended by Majithia Wage Board is accepted, then it would amount to permitting the employer to pay lesser wages than the Minimum Wages. Therefore, what is otherwise an offence and violative of Art.23 of the Constitution of India, cannot be legalize under Clause 20(j) of recommendation Majithia Wage Board. Further any interpretation which leads to legalize an act which otherwise is an offence should always be avoided. Thus, only that declaration can be said to be a valid declaration under Clause 20(j) of recommendation of Majithia Wage Board if it is in favour of the employee and not detrimental to his interest. Therefore, the contention of the Petitioner that the respondent had given a declaration thereby expressing his satisfaction over the pay scale which was being given to him cannot be accepted, and it cannot be held that the respondent was estopped from claiming higher pay scale as recommended by Majithia Wage Board.

There is no pleading in the statement of claim regarding category in which the respondent would fall as well as regarding classification of Hoshangabad Unit.

27. By referring to the statement of claim filed by the respondent, it is submitted by Counsel for the petitioner that the respondent had not clarified that under which category he would fall and similarly there is no averment in the statement of claim that under which classification, the Hoshangabad unit of the newspaper would fall. It is further submitted that the respondent himself had claimed that he was working as DNE and as per the recommendation of Majithia Wage Board, the respondent would fall under Group 3 and since, the Dy. News Editor is in charge of

bringing out the city edition, therefore, his case would not be covered under the recommendation of Majithia Wage Board.

28. Considered submissions made by Counsel for Petitioner.

29. DNE or Dy./Assistant News Editor means a person who assists the news editor in the discharge of his duties generally and/or is in charge of bringing out the city edition. This post would fall under 11A (Group 3). It is fairly conceded by Counsel for the petitioner, that this objection was not raised by the petitioner before the Labour Court but tried to submit that since, it is a pure question of law, therefore, it can be raised for the first time before this Court.

30. However, this Court is unable to convince itself that the objection raised by the petitioner is a pure question of law. The definition of DNE clearly specifies that a person who assists the news editor in discharge of his duties, however, he may also be incharge of bringing out the city edition. Therefore, whether the respondent was incharge of bringing out the city edition is necessarily a pure question of fact. No pleadings were made by the petitioner in its written statement that the respondent was incharge of bringing out the city edition. There is no whisper in the written statement with regard to the duties which were assigned to the respondent. The nomenclature of the post will not determine the fate but the duties which were assigned to the employee will determine the *lis.* There is no whisper in the evidence also in this regard. A specific question was put to Anil Jaiswal (DW1) in para 44 of his cross examination regarding the duties which were assigned to the petitioner, but he was not able to explain the same. Similarly, Deepak Kumar Sharma (D.W.2) has admitted in para 45 of his cross examination, that no document has been

filed to show that the respondent had any supervisory capacity and no document has been filed to show that 10-15 workers were working under the respondent. Thus, it is clear that the petitioner has failed to prove that the respondent was working in supervisory, managerial or administrative capacity. Section 2(f) of Act, 1955 defines Working Journalist which reads as under :

> (f) "Working Journalist" means a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishment, and includes an editor. a leader writer, news- editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proof-reader, 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-,
>
> (g) all words and expressions used but not defined in this Act and deemed in the Industrial Disputes Act, 1947 (XIV of 1947), shall have the meanings respectively assigned to them in that Act.

The Supreme Court in the case of **Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shailesh kumar Harshadbhai Shah,** reported in **(2006) 6 SCC 548** has held as under :

> **13.** The ingredients of the definition of "workman" must be considered having regard to the following factors:
>
> (*i*) Any person employed to do any skilled or unskilled work, but does not include any such person employed in any industry for hire or reward.*
>
> (*ii*) There must exist a relationship of employer and employee.
>
> (*iii*) The persons inter alia excluded are those who are employed mainly in a managerial or administrative capacity.
>
> **14.** For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also the terms of the appointment in the job performed are relevant considerations.
>
> **15.** Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being in charge of the

section alone and that too it being a small one and relating to quality control would not answer the test.

16. The precise question came up for consideration in *Ananda Bazar Patrika (P) Ltd.* v. *Workmen* wherein it was held: (SCC p. 249, para 3)

"*3*. The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity."

17. A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

The Supreme Court in the case of **Arkal Govind Raj Rao v. Ciba Geigy of India Ltd.,** reported in **(1985) 3 SCC 371** has held as under :

16. The test that one must employ in such a case is what was the primary, basic or dominant nature of duties for which the

> person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth.

31. Thus, if an employee had no controlling or supervisory power, then whatever the nomenclature of his post may be, it cannot be held that the employee was holding Managerial, Administrative or Supervisory power.
32. Therefore, it is held that the respondent was not working in Managerial or Administrative or Supervisory capacity. Further more, the petitioner was in possession of all the documents, but it did not file the same to show the duties which being performed by the respondent. It is true that the respondent did not file any application seeking direction to the petitioner to produce the documents, but it is equally true that if a person is in possession of best evidence, and decides not to file the same, then this Court can draw an adverse inference against such an erring litigant. Section 114 of Evidence Act reads as under :

> **114. Court may presume existence of certain facts.**—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
>
> *Illustrations*
>
> The Court may presume—

(*a*) that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c*) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(*e*) that judicial and official acts have been regularly performed;

(*f*) that the common course of business has been followed in particular cases;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(*i*) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it—

as to *illustration (a)*—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to *illustration (b)*—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

as to *illustration (b)*—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to *illustration (c)*—A, the drawer of a bill of exchange, was a man of business. B, the acceptor was a young and ignorant person, completely under A's influence.

as to *illustration (d)*—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to *illustration (e)*—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to *illustration (f)*—the question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to *illustration (g)*—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

as to *illustration (h)*—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to *illustration (i)*—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

Section 114 illustration (g) of Evidence Act, clearly postulates that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. The Supreme Court in the case of **Tomaso Bruno v. State of U.P.,** reported in **(2015) 7 SCC 178** has held as under :

27.*. As per Section 114 Illustration (*g*) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 Illustration (*g*) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of the Negotiable Instruments Act, where the court has no option but to draw a statutory presumption, under

> Section 114 of the Evidence Act, the court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 Illustration (*g*) of the Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.

The Supreme Court in the case of **Union of India v. Ibrahim Uddin,** reported in **(2012) 8 SCC 148** has held as under :

> **12.** Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the court may draw adverse inference under Section 114 Illustration (*g*) of the Evidence Act notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the said evidence. [Vide *Murugesam Pillai* v. *Manickavasaka Pandara*, *Hiralal* v. *Badkulal*, *A. Raghavamma* v. *A. Chenchamma*, *Union of India* v. *Mahadeola lPrabhu Dayal*, *Gopal Krishnaji Ketkar* v. *Mohd. Haji Latif*, *BHEL* v. *State of U.P.*, *Mussauddin Ahmed* v. *State of Assam* and *Khatri Hotels (P) Ltd.* v. *Union of India*.]

The Supreme Court in the case of **Pradip Buragohain v. Pranati Phukan,** reported in **(2010) 11 SCC 108** has held as under :

> **28.** Non-production of the documents admittedly available with the appellant that would lend credence to the version set up by the appellant that the incident of corrupt practice was reported to him and/or to his election agent would give rise to an adverse inference against the appellant that either such complaints were never made or if the same were made they did not contain any charge regarding the commission of corrupt practices by the respondent in the manner and on the dates and the places alleged in the petition.
>
> **29.** We may in this regard refer to Illustration (*g*) to Section 114 of the Evidence Act, 1872 which permits the Court to draw an adverse presumption against the party in default to the effect that evidence which could be but is not produced would, if produced, have been unfavourable to the person who withholds it. The rule is contained in the well-known maxim: *omniapraesumuntur contra spoliatorem*. If a man wrongfully withholds evidence, every presumption to his disadvantage consistent with the facts admitted or proved will be adopted.

33. It is submitted by Counsel for the Petitioner, that in fact the burden to prove the nature of duties of the employee was on the employee and since, no application was filed for production of record, therefore, adverse inference can be drawn against the Petitioner. To buttress his contention, the Counsel for Petitioner has relied upon the judgment

passed by Supreme Court in the case of **Range Forest Officer and others Vs. S.T. Hadmimani,** reported in **(2002) 3 SCC 25, Mukesh K. Tripathi Vs. Sr. Divisional Manager, LIC and others** reported in **AIR 2004 SC 4179.**

34. As already pointed, the petitioner neither pleaded anything in its written statement about the nature of work which was being discharged by the respondent, nor led any evidence in that regard. Even, the petitioner did not challenge that owing to the nature of duties, the application is not maintainable. Unless and until the Petitioner had set up a defence that application is not maintainable on the ground that the petitioner is not covered under Section 2(f) of Act, 1955, the burden had not shifted on to the respondent to establish that he was not discharging any Managerial, Administrative or Supervisory powers. Under these circumstances, merely because no application was filed by the respondent seeking direction to the petitioner to produce documentary evidence, this Court is of the considered opinion, that whether the petitioner was asked to produce documents or not, non-production of documents which were in possession of the petitioner would invite adverse inference against the petitioner.

35. It is next contended by Counsel for the petitioner, that the Labour committed material illegality by holding that the Petitioner falls under Class I as per classification of news agency having gross revenue of Rs. 10,000/- crores and above. It is submitted that since, Hoshangabad unit is a separate unit and the balance sheets of three years of said unit were filed, therefore, no adverse inference should have been drawn against the Petitioner for placing it in Group 1.

36. Considered the submissions made by Counsel for the Petitioner.

37. “Newspaper” has been defined under Section 2(b) of Act, 1955, which reads as under :

> (b) “Newspaper” means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as may, from time to time, be notified in this behalf by the Central Government in the official Gazette.

38. Therefore, it is clear that only print media would be covered by the definition of “News Paper” and not any other media.

39. “Newspaper Establishment” has been defined under Section 2(d) of Act, 1955,which reads as under :

> (d) "Newspaper establishment” means an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspaper or for conducting any news agency or syndicate:
>
> and includes newspaper establishments specified as one establishment under the Schedule. Explanation. -For the purposes of this clause,-
>
> (a) Different departments, branches and centers of newspaper establishments shall be treated as parts thereof;
>
> (b) A printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper.

The Supreme Court in the case of ***Indian Express Newspapers (P) Ltd. v. Union of India,*** reported in ***1995Supp (4) SCC 758*** has held as under :

> **16.** As regards the other grounds of attack, we are afraid we see no reason to interfere with the award on the said grounds. In view of the amended definition of the "newspaper establishment" under Section 2(*d*) which came into operation retrospectively from the inception of the Act and the Explanation added to Section 10(4), and in view further of the fact that in clubbing the units of the establishment together, the Board cannot be said to have acted contrary to the law laid down by this Court in *Express Newspapers case*, the classification of the newspaper establishments on all-India basis for the purpose of fixation of wages is not bad in law. Hence it is not violative of the petitioners' rights under Articles 19(1)(*a*) and 19(1)(*g*) of the Constitution. Financial capacity of an all-India newspaper establishment has to be considered on the basis of the gross revenue and the financial capacity of all the units taken together. Hence, it cannot be said that the petitioner-companies as all-India newspaper establishments are not viable whatever the financial incapacity of their individual units. After amendment of Section 2(*d*) retrospectively read with the addition of the Explanation to Section 10(4), the old provisions can no longer be pressed into service to contend against the

grouping of the units of the all-India establishments, into one class.

40. It is fairly conceded by Counsel for the Petitioner, that whatever profit or loss is incurred by the Hoshangabad Unit, gets transferred to the account of the Head office of the News paper. Anil Jaiswal (D.W.1) had stated that the work of the News paper is controlled by Management of the Board. He further admitted that all the units of DB Corp are under the control of Managing Director and has only one Head Quarter. Even Deepak Kumar Sharma (D.W.2) admitted that all the units work under the control of Board of Director and its team. It is not the case of the petitioner that Hoshangabad Unit is not under the supervision of Board of Directors or has its own separate head quarter. Thus, it is clear that the entire work of every unit including Hoshangabad unit is controlled from the Head Quarter and is under the Board of Directors. Thus, clubbing of all the units for the purposes of wages is permissible specifically when the loss and profit gets transferred to the Head Quarter. It is not the case of the petitioner that the profit and loss of Hoshangabad unit remains at Hoshangabad, but during the course of argument, it was submitted that in case if the unit is running in loss, then the deficit would be made good by the Head Quarter and similarly, the profit would get transferred to Head Quarter. Further more, it is clear from the impugned order, that inspite of order by the Labour Court, the Petitioner did not file the balance sheet of DB Corp. Under these circumstances, the Labour Court did not commit any mistake by drawing an adverse inference against the Petitioner to

hold that it falls under Group 1 having gross revenue of Rs. 10,000 crores and above.

Whether the Labour Court had jurisdiction to try the reference, or the jurisdiction was with Industrial Tribunal?

41. It is submitted by Counsel for the Petitioner, that the respondent did not approach the State Govt. and in fact approached Dy. Labour Commissioner, who in his turn made a recommendation to the State Govt. to refer the matter to the Labour Court, therefore, the entire proceedings are vitiated because Dy. Labour Commissioner has no jurisdiction to make any recommendation to the State Govt. It is further submitted by Counsel for the petitioner that it is clear from the reference made by State Govt. that the said reference was made under Section 17(2) of Act, 1955 and under Section 10 and 12 of Industrial Disputes Act. It is submitted that Wages would fall in schedule III of Industrial Disputes Act, therefore, only the Industrial Tribunal has jurisdiction to entertain the claim of the respondent and thus, it is submitted that the Labour Court had no jurisdiction to decide the claim of the respondent.
42. Considered the submissions made by Counsel for Petitioner.
43. Section 17 of Act, 1955 reads as under :

> 17. **Recovery of money due from an employer.** - (1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorized by him in writing in this behalf or in case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an

application to the State Government for the recovery of the amount due to him and if the State Government or such authority as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector or shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of Industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if question so referred were a matter referred to the Labour Court for the adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).

44. From plain reading of Section 17(1) of Act, 1955, it is clear that it is in the nature of execution and would apply only in those cases where there is no dispute about the amount which is due from an employer. It appears that the respondent approached the Dy. Labour Commissioner,

who found that there is a dispute between the parties which cannot be adjudicated under Section 17(1) of Act, 1955, therefore, he forwarded his recommendations to the State Govt. for taking action under Section 17(2) of Act, 1955.

45. If any dispute arises which is covered by Section 17(2) of Act, 1955, then the State Govt. either on his own motion or on an application made to it can refer the matter to the Labour Court. In order to act on its own motion, the State Govt. must have some information from any source. If the Dy. Labour Commissioner brought to the notice of the State Govt. regarding existence of a dispute and on the basis of such information, if the State Govt. decided to act on its own motion, then it cannot be said that the reference made by the State Govt. was contrary to the provisions of Section 17(2) of Act, 1955.

46. By referring to the Industrial Disputes Act, it is submitted that the dispute in question was regarding wages, and Wages fall in Schedule III of Industrial Dispute Act, and therefore, only the Industrial Tribunal has jurisdiction to decide such dispute.

47. If the reference made by the State Govt. is considered, then it is clear that it has been specifically mentioned that reference is being made under Section 17(2) of Act, 1955 read with Section 10(1)(c) and 12(5) of Industrial Disputes Act. It is clear that reference was made under Section 17(2) of Act, 1955. Simultaneous exercise of power under Section 10(1)(c) and Section 12(5) of Industrial Disputes Act, would not take out the reference out of the purview of Section 17(2) of Act, 1955. Section 17(2) of Act, 1955 has already been reproduced in the previous paragraph and only the Labour Court has jurisdiction to decide the

reference made by State Govt. under Section 17(2) of Act, 1955. Therefore, the contention of the Counsel for Petitioner, that Labour Court had no jurisdiction and the jurisdiction lies with Industrial Tribunal is misconceived and is hereby **rejected**.

No prior notice was given to the Petitioner as per Form C of The Working Journalists (Conditions of Service) And Miscellaneous Provisions Rules, 1955.

48. It is submitted by Counsel for the petitioner that as per Form C of The Working Journalists (Conditions of Service) And Miscellaneous Provisions Rules, 1955, 15 days prior notice to the employer was necessary, but the same was not given, therefore, the entire proceedings are vitiated.
49. Considered the submissions made by Counsel for the Petitioner.
50. Form C under Rule 36 of The Working Journalists (Conditions of Service) And Miscellaneous Provisions Rules, 1955, prescribes the application under Sub-Section (1) of Section 17 of The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provisions Act, 1955.
51. So far as Section 17(1) of Act, 1955 is concerned, it relates to undisputed claim and the competent authority can issue the RRC directly without adjudicating any dispute. Thus, Section 17(1) of Act, 1955, is in the nature of execution. But the present case does not fall within Section 17(1) of Act, 1955 but it falls under Section 17(2) of Act, 1955 which deals with adjudication of the entitlement. Since, Form C of The Working Journalists (Conditions of Service) And Miscellaneous

Provisions Rules, 1955 does not deals with Section 17(2) and it is merely a prescribe format for filing an application under Section 17(1) of Act, 1955, therefore, it is held that it was not necessary for the respondent to give any prior notice to the Petitioner. Further more, the Counsel for the Petitioner also could not point out any provision from the Act, 1955 which requires issuance of notice prior to approaching the State Government under Section 17(2) of Act, 1955. Therefore, the contention is hereby **rejected**.

52. Although in all the misc. petitions, the above grounds were common, but in two misc. petitions, additional grounds were argued, which shall be considered separately.

M.P. No. 4840 of 2021

53. It is submitted by Counsel for the Petitioner, that the Wages have been calculated by the Labour Court on the basis of wages paid to one Manish Kumar Dubey which is evident from the calculation sheet attached with the impugned order, whereas the respondent in the said case is Yogesh Malviya.

54. Considered the submissions made by Counsel for the Petitioner.

55. It is true that along with the impugned order, the calculation chart of Manish Kumar Dubey has been annexed, but the calculation chart of Yogesh Malviya, Ex.P1 has been placed on record along with Deposition Sheet of Yogesh Malviya. As per the said chart, Yogesh Malviya had claimed Rs. 9,81,992.79 by way of difference in wages and as per the Impugned order, the Labour Court has also held that although the respondent has claimed Rs.9,81,992.79 by way of difference in wages, but he is entitled for Rs. 4,13,598/-. Thus, it appears that by mistake,

chart of another employee has been annexed with the impugned order, but in fact, the Labour Court had considered the claim of respondent Yogesh Malviya only. Therefore, this Court is of considered opinion, that the matter is not required to be remitted back for the said limited purposes.

M.P. No. 1719 of 2021

56. By referring to the reference order, it is submitted by Counsel for the Petitioner that a combined order of reference was issued and accordingly, the Labour Court had also registered one case for considering the claim of eight employees. However, by order dated 28-8-2019 directed for separate registration of each case, therefore, it has caused prejudice to the Petitioner.

57. Considered the submissions made by the Counsel for the Petitioner.

58. By order dated 28-8-2019, the Labour Court directed for separate registration of each case. It is specifically mentioned in the order that neither party had any objection to the separation of eight cases. It is not the case of the Petitioner, that no objection on the part of the petitioner was wrongly written by the Labour Court. Even otherwise, the Labour Court was required to consider the claim of each and every employee. Thus, it is held that separate registration of each case had not caused any prejudice to the Petitioner.

59. No other argument is advanced by the Counsel for the parties.

60. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion, that no jurisdictional error was committed by the Court below by passing the impugned orders. Therefore, the order dated 24.7.2021 passed by Labour Court in case

no.02/I.D.A./2018(Ref.)(subject matter of M.P. No. 5093/2022), order dated 12.9.2019 passed by Labour Court in case no.87/2016/I.D.Ref (subject matter of M.P. No.2053/2020), order dated 21.10.2019 passed by Labour Court in case no.16/2017 (subject matter of M.P. No. 2124/2020), order dated 12.9.2019 passed by Labour Court in case no.92/2019 I.D.Ref (subject matter of M.P. No. 2509/2020), order dated 12.09.2019 passed by Labour Court in case no.90/2019 I.D.Ref. (subject matter of M.P.No., 2837/2020), order dated 15.10.2019 passed by Labour Court in case no.27/2017 (subject matter of M.P. No. 3316/2020), order dated 12.09.2019 passed by Labour Court in case no.88/2019 I.D.Ref. (subject matter of M.P. No.1719/2021), order dated 12.09.2019 passed by Labour Court in case no.91/2016 I.D.Ref (subject matter of M.P. No.1723/2021), order dated 24.9.2021 passed by Labour Court in case no.3/I.D.A./2018 (Ref) (subject matter of M.P. No.4840/2021) and order dated 20.12.2021 passed by Labour Court in case no.7/I.D.A./2017 (subject matter of M.P. No. 4493/2022), are hereby **affirmed**.

61. All the Misc. Petitions i.e., M.P. Nos. 5093/2022, 2053/2020, 2124/2020, 2509/2020, 2837/2020, 3316/2020, 1719/2021, 1723/2021, 4840/2021 and 4493/2022 are hereby **dismissed**.

No order as to costs.

(G.S. AHLUWALIA)
JUDGE

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