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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P (C) 6319/2014

STATESMAN MAZDOOR UNION ..... Appellant
Through: Dr. Vijendra Mahndiyan and Ms.Pallavi Awasthi, Advs.

versus

UNION OF INDIA THROUGH SECRETARY (LABOUR) AND ANR ..... Respondents
Through: Mr. Bhagvan Swarup Shukla, CGSC for R1.
Mr. Samar Bansal, Ms. Shreya Singhal, Mr.Manan Shishodia and Ms. Devahuti Pathak, Advs. for R2.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

<u>O R D E R</u>

% 06.07.2018

1. By this writ petition, the petitioner seeks direction to the Union of India/respondent No.1 to renotify the notifications dated 05.12.2000 and 15.12.2000.

2. The facts giving rise to the petition are that for the purpose of enabling the Central Government to fix or revise the wages in respect of journalists and non-journalists newspaper employees and news agency employees, two Wage Boards were constituted under Sections 9 and 13C of the Working Journalists

and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (in short WJ Act) on 02.09.1994 by the notifications of the Government of India in the Ministry of Labour. The recommendations were submitted to the Central Government on 25.07.2000. By notification dated 05.12.2000, the Ministry of Labour, Government of India in exercise of its power under Section 12 of the WJ Act issued the orders for implementation of the recommendations of the Wage Board which is called as Manisana Wage Board Award to be effective from 01.04.1998.

3. Another notification dated 15.12.2000 was issued by the Government of India, Ministry of Labour, under Section 12 of the WJ Act making certain modification in the beforesaid notification dated 05.12.2000.

4. A writ petition No.28588/2001 was filed by M/s Manipal Media Network Limited before the High Court of Karnataka challenging the notifications dated 05.12.2000 and 15.12.2000 mentioned here-in-before and the writ petition was allowed on 01.02.2006. Para No.5 of the judgment reads as under:-

> "In my opinion, the Central Government ought to have issued notices to the petitioner prior to passing of the orders Annexures "J" and "K", as the modifications made by the Central Government would increase the liability of the petitioner in the payment of wages to the journalists. In the absence of issuance of notice to the petitioner, the material

modifications made by the Central Government are vitiated. **Accordingly, the orders passed by the Central Government dated 05.12.2000 and 15.12.2000 produced as Annexures "J" and "K" respectively are quashed in so far as they relate to the petitioner herein and the matter is remitted to the Central Government respondent No.1 for reconsideration in accordance with law after issuing notice to the petitioner.**

5. Subsequently, Indian Newspaper Society (INS) of which respondent No.2 is a member, challenged the notification dated 15.12.2000 modifying the rates of wages as fixed in consequence of the notification dated 05.12.2000 in this Court by WP (C) 4940/2002. During the course of the arguments, it was impressed that Karnataka High Court, vide its order dated 01.02.2006, has struck down the notification dated 15.12.2000 being in contravention of Section 12 (2) of the WJ Act as no notice was given by the Government to the affected parties before modifying the Award. While disposing of the writ petition on 21.11.2006, this court observed that Government should have served a notice on the petitioner and heard them before issuing the modification. Taking note of the fact that the notification had been struck down by the Karnataka High Court, this Court observed that this notification does not survive and the writ petition was allowed. It was also noted that the Government shall be free to bring in case it still intends to, the modifications after following the procedure as laid down under

the Act. The relevant Para of the judgment reads as here under:-

> "It is a settled position of law that whatever an additional burden is put by way of modification on a party, the party must be heard. I consider that the Government should have served a notice on the petitioners and heard the petitioners before issuing modification.
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> Since notification has already been struck down by Karnataka High Court and I have been informed on instructions from Sh. Sher Shah, Under Secretary that the order of Karnataka High Court has not been challenged so far, for all practical purposes, this notification does not survive.
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> This writ petition stands allowed since the impugned notification has already been struck of in view of the judgment of the Karnataka High Court. However, the Government shall be free to bring in case it still intends to, the modifications after following the procedure as laid down under the Act. Petitioner, however, shall be bound by the order passed by any superior Court in a challenge to the judgment of the Karnataka High Court."

6. Later on, some of the affected workers preferred Writ Petition (C) Nos.5226/2010, 6194-6206/2010 and W.P (C) 14174/2009 in respect of said notifications dated 05.12.2000 and 15.12.2000 before the High Court of Karnataka titled as "Sri Achutha Rao & Ors. Vs. Union of India, Manisana Wage Board and Manipal Media Network Limited.". In the affidavit filed by respondent No.3 i.e. Manipal Media Network Limited which earlier had an order in its favour dated 01.02.2006, had shown its willingness

to implement the recommendations of the Wage Board and pay the arrears of wages to the petitioners. Accordingly, all these writ petitions were disposed of by the High Court of Karnataka on 21.01.2011 directing the respondent No.3 to pay the petitioners-employees the benefits of recommendations of Manisana Wage Board within a period of 90 days from the date of receipt of the order.

7. The learned counsel for the petitioner submits that the order dated 01.02.2006 of the Karnataka High Court has quashed the notifications dated 05.12.2000 and 15.12.2000 in so far as these relate to the petitioner in that writ petition No. 28588/2001 i.e. Manipal Media Network Ltd. and consequently it is not applicable to the petitioner herein. He submits that by an order dated 21.11.2006, this court has allowed the writ petition as the notifications were struck down by the judgment of the Karnataka High Court dated 01.02.2006. He submits that the order dated 21.11.2006 of this Court is based on the judgment of the Karnataka High Court dated 01.02.2006 which is not applicable to the petitioners. He submits that despite the directions, the Government has not issued any further notification after following the procedure in terms of the order dated 21.11.2006 of this Court. He also brings to the notice of the Court that the petitioners have made representations dated 15.05.2013 and 10.02.2014 which have not been decided by

issuing the fresh notification under Section 12 (2) of the WJ Act.

8. Per contra, the learned counsel for respondent No.3 submits that issuance of the notification is in the nature of subordinate legislation and directing the Government to issue such notification would amount to taking a policy decision in a particular manner which is impermissible. He has relied upon a recent judgment of the **Hon'ble Supreme Court** in **Mangalam Organics Limited Vs. Union of India** ***(2017) 7 SCC 221*** following its earlier decision in **Census Commr. Vs. R. Krishnamurthy** ***2015 (2) SCC 796***. The para No.35 and 36 of the judgment reads as under:-

> **"35.** Issuance of a notification under Section 11-C of the Act is in the nature of subordinate legislation. Directing the Government to issue such a notification would amount to take a policy decision in a particular manner, which is impermissible. This Court dealt with this aspect recently in *Census Commr.* v. *R. Krishnamurthy* (2015) 2 SCC 796. The following discussion from the said judgment is useful and worth a quote: (SCC pp. 806-07, paras 25-26 & 29)
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> > "*25.* Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the domain of

the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.

26. In this context, we may refer to a three-Judge Bench decision in *Suresh Seth* v. *Commr., Indore Municipal Corpn.*, wherein a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely, that of a Member of the Legislative Assembly and also of a Mayor of a Municipal Corporation. Repelling the said submission, the Court held: (SCC pp. 288-89, para 5)

'*5*. … In our opinion, this is a matter of policy for the elected representatives of people to decide and no

direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees' Welfare Assn.* v. *Union of India*, it has been held that *no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority*. This view has been reiterated in *State of J&K* v. *A.R. Zakki*, it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature.'

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29. In this context, it is fruitful to refer to the authority in *Rustom Cavasjee Cooper* v. *Union of India* wherein it has been expressed thus: (SCC p. 294, para 63)

'*63. … It is again not for this Court to consider the relative merits of the different political theories or economic policies*. … This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of Parliament in enacting a law.

36. As can be seen from the extracted portion of the said judgment, in *Supreme Court Employees' Welfare Assn.* v. *Union of India*, it was categorically held that (SCC p. 219, para 51) no court can direct a legislature to enact a particular law. Similarly when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority

> cannot be asked to enact the law which it has been empowered to do under the delegated legislative authority."

9. The learned Central Government Standing Counsel submits that no fresh notification is required to be issued by the Government under Section 12 (2) of the WJ Act, as by order dated 21.01.2011, the Karnataka High Court on consent of M/s Manipal Media Network Limited has directed to pay the petitioners/employees the benefits of wage board recommendations of the Manisana Wage Board within 90 days. He submits that the order dated 01.02.2006 of the Karnataka High Court was applicable only to M/s Manipal Media Network Limited which stands recalled by subsequent order dated 21.01.2011.

10. I have heard learned counsel for the parties.

11. The order dated 21.11.2006 deciding the Civil Writ Petition No.4940/2002 by this court indicate that the challenge was only the notification dated 15.12.2000 modifying the rates of wages as fixed in consequence of the notification dated 05.12.2000. The writ petition was allowed since the impugned notification has already been struck of in view of the judgment dated 01.02.2006 of the Karnataka High Court after observing that the Government should have served a notice on the petitioner (i.e. INS) and heard them before issuing the modification. In fact, as rightly submitted the order of the

Karnataka High Court dated 01.02.2006 quashed the said notifications in so far they relate to the petitioner therein (i.e. M/s. Manipal Media Network Ltd.) and the matter was remitted to the Central Government/respondent No.1 for recommendation in accordance with law after issuing the notice to the petitioner (i.e. M/s. Manipal Media Network Ltd.). This order dated 01.02.2006 in W.P. No. 28588/2001 of Karnataka High Court does not stand any more in view of its subsequent order dated 21.01.2011 in Writ Petition (Civil) No.5226/2010, 6194-6206/2010 and W.P (C) 14174/2009 titled as "Sri Achutha Rao & Ors. Vs. Union of India and Ors." directing M/s Manipal Media Network Ltd. to pay the benefits of Manisana Wage Board to petitioners-employees.

12. By order dated 21.11.2006, this Court has already observed that the Government shall be free to bring in case it still intends to, the modifications after following the procedure as laid down under the Act. The notification dated 05.12.2000 was never quashed by this Court by order dated 21.11.2006. The respondent No.1/Union of India has so far not issued fresh notification under Section 12 (2) after quashing of the notification dated 15.12.2000 vide order dated 21.11.2006 though the representation dated 15.05.2013 and 10.02.2014 of the petitioners are still pending with them.

13. In the circumstances, the respondent No.1 i.e. Union of India is directed to dispose of the said representations of the petitioner

within a period of two months from the date of receipt of the copy of this order after following the due procedure as laid down under the WJ Act.

14. The writ petition is disposed of accordingly.

VINOD GOEL, J.

JULY 06, 2018

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HIGH COURT OF DELHI