



GAHC010041602018

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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/1274/2018**

JANASADHARAN PRINTING AND PUBLISHERS (P) LTD. AND ANR.  
A COMPANY DULY REGISTERED UNDER THE COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT INDUSTRIAL ESTATE,  
BAMUNIMAIDAM, GUWAHATI - 781021, REP. BY ITS DIRECTOR SRI TAPAN  
KR. BORA.

2: SRI TAPAN KR. BORAH  
S/O BHABA NATH SHARMA  
R/O P.S. ROAD  
DIST. NAGAON  
ASSAM  
PIN - 782120

VERSUS

THE STATE OF ASSAM AND 6 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,  
LABOUR AND WELFARE DEPARTMENT,  
DISPUR, GUWAHATI -6.

2:THE LABOUR COMMISSIONER CUM AUTHORITY  
UNDER THE WORKING JOURNALISTS AND OTHER NEWSPAPER  
EMPLOYEES (CONDITIONS OF SERVICE)  
AND MISCELLANEOUS PROVISIONS ACT  
1955

GOPINATH NAGAR  
GUWAHATI -16.

3:THE ASSTT. LABOUR COMMISSIONER

ULUBARI  
KAMRUP (M)  
ASSAM



PIN - 781007.

4:THE LABOUR INSPECTOR

GUWAHATI  
OFFICE OF THE ASSTT. LABOUR COMMISSIONER  
KAMRUP (M)  
ULUBARI  
GUWAHATI - 781007.

5:THE DEPUTY COMMISSIONER

KAMRUP (M)  
GUWAHATI  
ASSAM  
PIN - 781001.

6:THE CERTIFICATE OFFICER

BAKIJAI BRANCH  
KAMRUP (M)  
GUWAHATI  
ASSAM- 781001.

7:JANASADHARAN NEWSPAPER EMPLOYEES UNION

REP. BY ITS PRESIDENT SRI MRINAL KANTI MISRA  
HOUSE NO. 15  
NARIKALBASTI  
CHINAKI PATH  
GUWAHATI - 781024

Linked Case : WP(C)/7158/2021

JANASADHARAN PRINTING AND PUBLISHERS (P) LTD. AND ANR.  
A COMPANY DULY REGISTERED UNDER THE COMPANIES ACT  
1956 HAVING ITS REGISTERED OFFICE AT INDUSTRIAL ESTATE  
BAMUNIMAIDAM  
GUWAHATI-781021  
REP. BY ITS DIRECTOR SRI TAPAN KR. SHARMA.

2: SRI TAPAN KR. SHARMA  
S/O BHABA NATH SHARMA

R/O P.S. ROAD  
AMOLAPATTY



DIST. NAGAON  
ASSAM  
PIN-782003  
VERSUS

THE UNION OF INDIA AND 4 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF LABOUR AND EMPLOYMENT  
SHRAM SHAKTI BHAWAN  
NEW DELHI-110001.

2:THE STATE OF ASSAM

REP.B Y THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
LABOUR AND EMPLOYMENT DEPARTMENT  
DISPUR  
GUWAHATI-6.

3:THE ADDITIONAL SECRETARY

LABOUR AND EMPLOYMENT DEPARTMENT  
GOVT. OF ASSAM

DISPUR  
GUWAHATI-6.

4:THE DEPUTY SECRETARY

LABOUR WELFARE DEPARTMENT  
GOVT. OF ASSAM  
DISPUR  
GUWAHATI-6.

5:THE LABOUR COMMISSIONER  
CUM AUTHORITY UNDER THE WORKING JOURNALISTS AND OTHER  
NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE) AND  
MISCELLANEOUS PROVISIONS ACT  
1955

GOPINATH NAGAR  
GUWAHATI-16.

6:JANASADHARAN NEWSPAPER EMPLOYEES UNION

REP. BY SRI MRINAL KANTI MISRA  
HOUSE NO. 15  
NARIKALBASTI  
CHINAKI PATH  
GUWAHATI-781024

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BEFORE

**HON'BLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioners : Mr. D. Das .... Senior Advocate.  
Mr. D. Choudhury. ... Advocate

For the respondent no.1 : Mr. R.K. Dev Choudhury .... CGC.

For the respondent nos.2 to 6 : P.S. Deka .... Sr. GA, Assam

For the respondent no.6 : Mr. K. Gogoi .... Addl. Sr. GA,

For the respondent no.7 : Mr. S. Borthakur .... Advocate.

Date of hearing & judgment : 21.01.2022

**JUDGMENT AND ORDER**

Heard Mr. D. Das, learned Senior Counsel assisted by Mr. D. Choudhury learned counsel appearing on behalf of the petitioners. Mr. R.K. Dev Choudhury, learned CGC appears on behalf of the respondent no.1; Mr. K. Gogoi, learned Additional Senior Government Advocate appears on behalf of the respondent nos.2 to 6 and Mr. S. Borthakur, learned counsel appears on behalf of the respondent no.7. Both the writ petitions are taken up together as both are interconnected.

2. As contentions in the WP(C) No.7158/2021 touches upon the authority and the jurisdiction of the Labour Commissioner to act in terms with Section 17



of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter for short referred to the Act of 1955) the same is first taken up. In WP(C) 7158/2021 the petitioners have assailed the Notification dated 14.03.1996 whereby the Governor of Assam through the Additional Chief Secretary to the Government of Assam, Labour & Employment Department had issued the said notification in exercise of the powers under Section 17(1) of the Act of 1955 and under Section 9(1) of the Working Journalists (Fixation of Rate of Wages) Act, 1958 whereby the Labour Commissioner was appointed as the authority under the said Act to enable the employees to prefer claim petitions before him for recovery of the arrears due to the employees under the said Act and to dispose of the said claim petitions by the authority under the provisions of the said Act. It is the contention of the petitioners that a perusal of the Section 17(1) would show that application as regards any amount due under the Act of 1955 has to be made to the State Government for recovery of the amount and the State Government or any authority as the State Government may specify in their behalf thereupon can pass such orders as within the ambit of Section 17(1) of the Act of 1955.

3. Mr. Das, learned Senior Counsel draws the attention of this Court to the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957 (hereinafter for short referred to the Rules of 1957) and more particularly to Rule 36, wherein it is being mentioned that an application under Section 17 of the Act shall be made in Form C to the Government of the State, where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed is situated. He further draws the attention of



this Court to Form No. 'C' wherein it has been mentioned that the said application has to be made to the Secretary to the Government. On the basis of this provisions the learned Senior Counsel contends that the claim petition cannot be made to the Labour Commissioner and it has made to the State Government in the manner prescribed in Rule 36 of the Rules of 1957 and in the form as stipulated in Form No.'C'. He further contends that the Labour Commissioner has not power to adjudicate the disputes or any question as regards the dues. The Labour Commissioner can at best have the authority to act within the four corners of the powers given in Section 17(1) of the Act of 1955. He submits that when a question arises as regards dues, it has to be in consonance with Section 17(2) of the Act and therefore contends that the said Notification dated 14.03.1996 is *ultra vires* the Act of 1955 as well as the Rules framed therein under.

4. On the other hand, Mr. K. Gogoi, learned Additional Senior Government Advocate submits that Section 17(1) of the Act of 1955 categorically empowers the State Government to specify such authority and by way of the particular notification the State Government had specified, authorized and appointed the Labour Commissioner, Assam to be the authority within the meaning of Section 17(1) of the Act of 1955. Mr. Borthakur, learned counsel appearing on behalf of the respondent no.6 in WP(C) 7158/2021 submits that not only Section 17(1) empowers the State Government to specify the authority which have been done so in terms with the Notification dated 14.03.1996, he further submits that a perusal of the order dated 23.08.2016 passed in the case of *Avishek Raja & Others vs. Sanjay Gupta* [Contempt Petition (c) No.411/2014] by the Supreme Court and more particularly paragraph (d) shows that the Supreme Court had

also made it clear that an affected employee can lay his claims before the State Government/Labour Commissioner and as such the said notification cannot be said to be *ultra vires* the said Act of 1955.

5. I have heard the leaned counsels for the parties.

6. For proper adjudication of the issue as to whether the Notification dated 14.03.1996 is *ultra vires* the Act of 1955 and the Rules framed therein under it would be relevant to quote hereinunder Section 17 of the Act of 1955 :

**“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 the 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 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 the question so referred were a matter referred to the Labour Court for 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).”



The Said Section 17 being connected to Rule 36 of the Rules 1957 the said Rule is also quoted hereinbelow :

**“36. Application under Section 17 of the Act.-** An application under Section 17 of the Act shall be made in Form C to the Government of the State, where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed, situated.”

The said Rule specifies the Form-C to be the manner in which the application has to be filed. Accordingly the said Form-C is also quoted hereinbelow:

**“FORM C**

*APPLICATION UNDER SUB-SECTION (1) OF SECTION 17 OF THE WORKING JOURNALISTS (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1955*

*[See rule 36]*

To

*The Secretary to the Government of ..... (here insert the name of the State Government)*

*Department of .....( here insert the name of the Department which deals with labour matters) (here insert the name of the place where the headquarters of the State Government are situated).*

Sir,

*I have to state that I Shri/Shrimati/Kumari ..... Son/widow/daughter of ..... a working journalist, was entitled to receive from ..... (here insert the name and address of the newspaper establishment) a sum of Rs..... on account of ..... (here insert gratuity, wages, etc., as the case may be), payable under the Working Journalists (Conditions of service) and Miscellaneous Provisions Act, 1955 (45 of 1955).*





*I further state that I was appointed by Shri..... by an instrument dated ..... to receive the amount of the gratuity on behalf of Shri/Kumari.....*

*I further state that I served the said newspaper establishment with a demand notice by registered post on..... for the said amount which the said newspaper establishment has neither paid nor offered to pay to me even though 15 days have since lapsed. The details of the amount due are mentioned in the statement hereto annexed.*

*I request that the said sum may kindly be recovered from the said newspaper establishment under section 17 of the said Act, and paid to me as early as possible.*

*\*[ I have been duly authorized in writing by ..... (here insert the name of the newspaper employee) to make this application and to receive the payment of the aforesaid amount due to him].*

*\*[ I am a member of family of late ..... (insert the name of the deceased newspaper employee), being his ..... (here insert the relationship) and am entitled to receive the payment of the aforesaid amount due to late ..... (here insert the name of the deceased newspaper employee)]*

*\*To be struck out when the payment is claimed by the newspaper employee himself.*

Station.....

.....

Signature of the applicant Date.....

Address....."

6. From a perusal of the said Section 17(1) of the Act of 1955 read with Rule 36 of the Rules of 1957, it would transpire that an application has to be made to the State Government for recovery of the amount due to an employee in terms with Section 17(1) and it is the State Government or any such authority as the State Government may specify in their behalf is satisfied that any amount if due the State Government or such authority may issue a certificate for that amount



to the Collector and the Collector shall proceed to recover that amount in the same manner as the arrear of land revenue. The said Section 17(1) has two parts for the purpose of entertaining a claim petition. The first part specifies that the application has to be made to the State Government and a perusal of Rule 36 read with Form-C also would show that the said claim petition has to be made to the Secretary of the State meaning the State Government. The authority to pass an order upon being satisfied in terms with Section 17 however has been given, not only the State Government but also to such authority as the State Government may specify and in this regard by virtue of the Notification dated 14.03.1996 the State Government had specified that it is the Labour Commissioner, Assam who shall be the authority to pass such orders. If the said interpretation is given the same would also be consonance to paragraph (d) of the order dated 28.03.2016 passed by the Supreme Court wherein it has been categorically mentioned that the State Government/Labour Commissioner before whom an affected employee can lay his claim and if such claims are being made, the State Government/Labour Commissioner would be fully empowered to carry out the necessary adjudication and pass consequential orders in terms with Section 17 of the Act of 1955. In that view of the matter and more particularly in view of the order dated 28.03.2016 this Court is of the opinion that the challenge made as regards the authority of the Labour Commissioner to adjudicate in terms with Section 17(1) of the Act of 1955 the notification dated 14.03.1996 is meritless but with an observation that the Labour Commissioner can only pass orders in terms with Section 17(1) of the Act of 1955 but not carry out adjudication if question arises to the amount due under the Act as the same falls within the purview of the Labour Court in terms of Section 17(2) of the Act.



7. In view of the observations and findings in WP(C) 7158/2021, this Court now takes WP(C) 1274/2018. This writ petition has been filed challenging the communication dated 31.08.2017 issued by the respondent no.2 to the respondent no.6, whereby a requisition was issued for recovery of an amount of Rs.1,83,43,581/- from the Directors of the petitioner no.1. It is the case of the petitioners in the instant writ petition that the Labour Commissioner could not have issued the said communication dated 31.08.2017 or had adjudicated upon the claims as regards the entitlement of the employees who have been arrayed as the respondent no.7 in the instant writ petition inasmuch as, the petitioners dispute the said amount and if there is a dispute the Labour Commissioner have no authority to pass such orders. It is the further case of the petitioners that a perusal of Section 17(2) of the Act of 1955 would show that if there is a dispute as regards the claims the State Government either on its own motion or on an application made to it refer the question to any Labour Court constituted under the Industrial Disputes Act, 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 the question so referred were a matter referred to the Labour Court for adjudication under that Act or law. In that regard the learned Senior Counsel, Mr. D. Das places before this Court the judgment of the Supreme Court rendered in the case of *Samarjit Ghosh vs. M/s Bennett Coleman & Co. and Another*, reported in (1987) 3 SCC 507 and more particularly refers to paragraph nos. 4, 5 and 6 to contend that neither the State Government nor the Labour Commissioner has any authority to decide when disputes arise as regards the claims in as much as the State Government has either on its own motion or on



an application make a reference to the Labour Court wherein question arises to the amount due. He further submits that the adjudication was made by the Labour Commissioner on its own that too without giving any notice is not only in violation to the principles of natural justice but also violates the mandate of Section 17(2) of the Act of 1955. He further submits that even if the order dated 28.03.2016 of the Supreme Court as referred to hereinabove is taken into consideration it would be apparent that the Supreme Court had also directed that the State Government/Labour Commissioner has to act in pursuance of Section 17 which includes the provision of Section 17(2). At this stage, Mr. Das draws the attention of this Court to paragraph 5 of the affidavit-in-reply filed by the petitioners to the affidavit-in-opposition filed by the respondent no.3 wherein the petitioners had taken a categorical stand that the petitioners cannot have any objection to the recommendation of the Majithia Wage Board which has been upheld by the Apex Court. The no objection of the petitioner as shown in Annexure-VII of the affidavit-in-opposition is in regard to the aforesaid fact but that does not mean that the petitioner will not have any objection to the arbitrary calculation of arrear salary made by the respondent authorities without giving any notice to the petitioner as has been done in the instant case that too on the basis of the list of employees provided by the respondent no.7. It is also the stand taken in the affidavit-in-reply that the petitioners are neither aware nor have any details as to how the said amount of Rs.1,83,43,581/- has been shown as arrear salary. In short, the stand of the petitioners to the said minutes dated 20.04.2017 is that there was no objection to the applicability of the Majithia Wage Board and the said no objection should not be read as no objection to the calculation.



8. Mr. Borthakur, learned counsel appearing on behalf of the respondent no.7 which is the Union representing the employees of the Janasadharan Newspaper run and managed by the petitioners submits that the petitioners never raised any disputes before the Labour Commissioner or before any authority and under such circumstances *sans* the dispute being raised the Labour Commissioner was well within his jurisdiction to exercise the powers under Section 17(1) and thereby direct the Collector to proceed to recover the said amount in the same manner as arrear of land revenue. He draws the attention of this Court to the affidavit-in-opposition filed by the respondent no.3 wherein the minutes of the meeting dated 20.04.2017 was enclosed as Annexure-VII. He draws the attention of this Court to a particular minute of the said meeting wherein the petitioners who were duly represented had stated that they had no objection in the calculation done in estimating the arrear due. He further draws attention of this Court to the order dated 28.03.2016 wherein the Supreme Court had authorized the State Government/Labour Commissioner to carry out necessary adjudication and pass consequential orders in terms with Section 17 of the Act of 1955. Alternatively he further submitted that in case if any direction is given by this Court for adjudication as regards the dispute before the Labour Court the said adjudication should be done at the earliest taking into consideration that the employees have been suffering since long for non-payment of the arrear dues. He also submitted that if this Court gives any direction to the respondent authorities to make a reference before the Labour Court and as admittedly some dues are payable by the petitioners certain directions should also be passed that in the interim certain payment be made pending disposal of the dispute before the Labour Court.

9. Mr. K. Gogoi, learned Additional Senior Government Advocate submits that the Labour Commissioner who is the respondent no.2 in the instant proceeding was never intimated by the petitioners as regards the dispute of arrears of the employees of the petitioners. He further submits that this aspect of the matter would be further clear from the fact that the petitioners have themselves admitted that they had no dispute in the minutes of the the meeting held on 20.04.2017.

10. I have learned counsel for the parties at length.

11. The scope and ambit of Section 17 of the Act of 1955 have been dealt with by the Supreme Court in the case of *Samarjit Ghosh (supra)*. Paragraphs 4, 5 and 6 being relevant are quoted hereinbelow :

*“4. The question whether the Government of West Bengal was empowered to make a reference of the dispute between the appellant and the employer company must be determined by the provisions of the Act in their application to the facts of this case. Section 17 of the Act makes provision for the recovery of money due to a newspaper employee from his employer. Sub-section (1) requires that an application by the newspaper employee complaining that an amount due to him-has remained unpaid by the employer should be made to the State Government, and provides that if the State Government is satisfied that any amount is so due it is empowered to issue a certificate for that amount to the Collector, and thereupon the Collector must proceed to recover that amount in the same manner as an arrear of land revenue. Which is the State Government to which such application lies is indicated by R. 36 of the Rules made under the Act. Rule 36 provides that an application under Section 17 of the Act shall be made to the Government of the State where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed is situated. It is the location of the Central Office or the Branch Office in which the newspaper employee is employed which determines*

*which State Government it will be. The Rule works in favour of the convenience of the newspaper employees*

*5. Sub-sections (2) and (3) of Section 17 provide :*

*(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 the question so referred were a matter referred to the Labour Court for 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-sec. (1).*

*6. When all the provisions of Section 17 are considered together it is apparent that they constitute a single scheme. In simple terms the scheme is this. A newspaper employee, who claims that an amount due to him has not been paid by his employer, can apply to the State Government for recovery of the amount. If no dispute arises as to the amount due the Collector will recover the amount from the employer and pay it over to the newspaper employee. If a question arises as to the amount due, it is a question which arises on the application made by the newspaper employee, and the application having been made before the appropriate State Government it is that State Government which will call for an adjudication of the dispute by referring the question to a Labour Court. When the Labour Court has decided the question, it will forward its decision to the State Government which made the reference, and thereafter the State Government will direct that recovery proceedings shall be taken. In other words the State Government before whom the application for recovery is made is the State Government which will refer the question as to the amount due to a Labour Court, and the Labour Court upon reaching its decision will forward the decision to the State Government, which will then direct recovery of the amount.”*

12. From a perusal of the said judgment it would therefore transpire that

Section 17 constitutes a single scheme which stipulates that the newspaper employee who claims that an amount due to him has not been paid by the employer can apply to the State Government for recovery of the amount. If no dispute arises as regard to the amounts due, on the basis of directions issued by the State Government or the Labour Commissioner in the instant case the Collector would recover the amount from the employer and pay it over to the newspaper employee. If a question arises as to the amount due, then in that regard the State Government will call for an adjudication of the dispute by referring the question to a Labour Court. The Labour Court shall then decide the question and forward it to the State Government which made the reference and thereupon the amount found due by the Labour Court may be recovered in the manner provided in Sub-Section (1) i.e. by issuing appropriate direction either by the State Government or the Labour Commissioner to the Collector to recover the said as arrear of land revenue.

13. What has been done in the instant case as would be apparent from a perusal of the communication dated 10.11.2016 issued by the Assistant Labour Commissioner is that the Office of the Assistant Labour Commissioner had already adjudicated the amount of arrear and directed by the petitioners to make payment of the arrears as per the recommendation of the Majithia Wage Board. Thereupon on 07.09.2017 the petitioners received the notice from the Certificate Officer, Bakijai Branch Kamrup(M) wherein the petitioners were informed that the Bakijai case has been instituted to pay to the Government a sum of Rs.1,83,43,581/- as arrear wages to 38 numbers of employees and the petitioners were asked to file objections within a period of one month. The petitioners then made enquiries and could come to learn that the said Bakijai



proceedings have been initiated on the basis of the impugned communication dated 31.08.2017. A perusal of the said communication dated 31.08.2017 would show that it has been mentioned that there was several correspondences by the Assistant Labour Commissioner-cum-Inspector notified under the Act with a direction to pay the same to the petitioners but the petitioners wilfully violated the legal provisions of the Act to pay their employees' due salaries and thereupon the employees through the Union submitted an application to the Labour Commissioner (respondent no.2) to initiate the process of recovery under Section 17(1) of the Act of 1955 as arrear of land revenue under Section 5 of the Bengal Public Demand Recovery Act, 1993 and accordingly a requisition was submitted to the Certificate Officer, Kamrup (M) *to recover an amount of Rs.1,83,43,581/- from the Directors of the petitioners.*

14. Therefore, it is apparent from the said impugned communication that there were various correspondences which were issued and in spite of those correspondences no payments were made and the impugned communication was a result of an application submitted to the respondent no.2 by the respondent no.7 to initiate the process of recovery under Section 17(1) of the Act of 1955. The question therefore, arises as to whether such an action is permissible without taking into consideration under Section 17(2) of the Act of 1972 which mandates that if any question arises as regards the amount due, it is the duty of the State Government either on an application or by itself to refer it to the Labour Court for adjudication. Here in this case the said aspect was not done as would be apparent from a perusal of the impugned communication itself. In fact the impugned communication refers that the respondent no.7 Union had submitted an application to the Labour Commissioner to initiate



process of recovery for non payment of the dues, which itself ought to have been taken into consideration as the request made in terms with Section 17(2) of the Act of 1955 and the respondent no.2 ought to have referred to it to the State Government for passing appropriate directions in terms with Section 17(2) of the Act. Instead of doing so, the respondent no.2 itself took up the role of adjudicatory authority under Section 17(2) of the Act which was not permissible under the provisions of Act. It is only the Labour Court as mentioned in Section 17(2) of the Act who has the authority to decide on the question as regards the claims. This having not been done and the impugned communication dated 31.08.2017 being in violation to the provisions of Section 17 of the Act of 1955 the said communication is interfered with and the set aside. Consequently the Bakijai Case No.11/2017 initiated on the basis of the said communication dated 31.08.2017 is also set aside.

15. Now the next question which arises as what is the next course of action should be taken. Taking into consideration the application filed by the respondent no.7 before the Labour Commissioner it would be deemed appropriate if the said communication is taken as a communication within the meaning of Section 17(2) of the Act of 1955 and on the basis thereof the State Government makes a reference to the Labour Court, Guwahati to decide the question as regards the claims of the respondent no.7 vis-à-vis the petitioners. Accordingly this Court therefore directs the respondent no.1 to make a reference within a period of 15 days from the date of passing of the instant order to the Labour Court, Guwahati so that the said adjudication can be taken up.

16. Taking into account the disputes between the respondent no.7 and the



petitioners arose as regards the non-payment of arrears and it has been pending since 2016 it is deemed appropriate that the Labour Court, Guwahati shall dispose of the said reference made within a period of 4 (four) months from the date of appearance of the parties before the Labour Court.

17. From the contentions of both the parties, it reveal that there are certain dues which the petitioners have to pay to its employees which is to be finally adjudicated upon by the Labour Court upon the reference being made. Taking into account the difficulties faced by the members of the Respondent No.7 and also in the interest of justice it is directed that pending the reference before the Labour Court, the petitioners are directed to deposit an amount of Rs.25,00,000/- in the office of the respondent no.2 within a period of 4 (four) weeks from today and the respondent no.2 shall upon receipt of the same, disburse the same to the members of the Respondent No.7. The said amount so deposited shall be subject to the outcome of the proceeding before the Labour Court.

18. With the above observations both the writ petitions stand disposed of.

19. A copy of the judgment be furnished to Mr. K. Gogoi, learned Additional Senior Government Advocate for taking necessary steps in terms with the direction made above.

**JUDGE**

**Comparing Assistant**