
(2018) 05 DEL CK 0346

In the Delhi High Court

Case No : WP(C) 2619 OF 2008 & CM APPL. 8881 OF 2015 & 380 OF 2016

AIRPORT AUTHORITY OF INDIA

APPELLANT

Vs

BABU LAL II & ORS.

RESPONDENT

Date of Decision : 24-05-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2018) 05 DEL CK 0346

Hon'ble Judges : VINOD GOEL

Bench : Single Bench

Advocate : Rajan Sabharwal, Devik Singh

Final Decision : Disposed Of

Judgement

VINOD GOEL, J.

CM APPL. 8881/2015 (by respondents No.3 & 5) & 380/2016 (by respondents No.1, 2 and 4) both under Section 17B of the Industrial Disputes Act, 1947.

1. Vide impugned award dated 05.10.2007 on making a reference by the Ministry of Labour, Central Government dated 13.02.2003, the learned

Presiding Officer, CGIT-cum-Labour Court No.2, directed the petitioner/Management to reinstate the workmen, viz., (i) Babu Lal-II, (ii) Kaptan, (iii)

Smt. Usha (iv) Smt. Imarti, (v) Umesh Kumar, (vi) Mahadesh-II and (vii) Natrajan along with 25% of back wages and cost of Rs.25,000/-. The

petitioner/Management had challenged the impugned award in this writ petition with respect to the five workmen, viz., Babu Lal-II, Kaptan, Smt.

Usha, Smt. Imarti and Umesh Kumar.

2. It is submitted by learned counsel for the applicants/respondents that after

the termination of their service, they remained unemployed and could not secure any employment despite best efforts. He submits that the petitioner has not rebutted the allegations. He submits that the respondents may be awarded the benefit of Section 17B of the Industrial Disputes Act, 1947.

3. Per contra, learned counsel for the petitioner/Management submits that the award dated 05.10.2007 has been impugned by them in the year 2008

whereas these applications have been filed after a gap of 8 years. He submits that the respondents should not be given the benefit of Section 17B of

the Industrial Disputes Act, 1947 from the date of the impugned award but from date of their filing the respective applications. To buttress his

argument, he relies upon a judgment of a single Judge of this Court in Birdhi Chand Naunag Ram Jain vs. P.O. Labour Court IV & Ors. CM

9256/2001 in CW 6091/1999 decided on 10.12.2003. He also submits that while awarding 25% of back wages, the Industrial Adjudicator has observed

that the respondents are manual workers and it could not be said that they were sitting idle and they must be doing some job off and on. He submits

that for that reason the Industrial Adjudicator has awarded 25% back wages to the respondents instead of the full back wages.

4. While rebutting the arguments of the learned counsel for the respondents, learned counsel for the petitioner management submits that they have no

objection if the benefit of Section 17B of the Industrial Disputes Act, 1947 is given to the respondents from the date of their filing of respective

applications.

5. For the adjudication of the applications, it would be profitable to refer to Section 17B of the Industrial Disputes Act, 1947, which reads as under:-

â??17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal

by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme

Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court,

full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any

establishment during such period and an affidavit by such workman had been filed to that effect in such Court: Provided that where it is proved to the

satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any

such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.â??

6. A perusal of the provision reflects requirement of following conditions: -

(i) An award of reinstatement of a workman by Labour Court/Tribunal is challenged in any proceeding before High Court or Supreme Court;

(ii) Workman has not been employed in any establishment during such period;

(iii) An affidavit to this effect has been filed by the workman in such court;

(iv) Employer shall be liable to pay such workman during the pendency of such proceedings full wages last drawn by him; and

(v) where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving

adequate remuneration during such period or part thereof, the court shall order that no wages shall be payable under this section for such period or

part thereof as the case may be.

7. There is an award dated 05.10.2007 of reinstatement with 25% back wages against the petitioner/management and in favour of the

respondents/workman. In their applications under Section 17B of the ID Act accompanied with affidavits, respondents stated that after the termination

of their services, they remained unemployed and could not secure any employment despite best efforts. The petitioner/management has not been able

to rebut the assertion of the workman-respondents.

8. Therefore, in view of the above discussion, the petitioner is directed to pay to the respondents the wages equivalent to last drawn or minimum

wages, whichever is higher from the date of filing of their respective applications. Arrears of wages be paid within eight weeks on furnishing of

particulars of the bank details of the respondents. The petitioner shall continue to pay such wages during the pendency of the petition or till age of

superannuation of the respondents, whichever is earlier on or before 10th of each succeeding English calendar month from June 2018. This would be

subject to the respondents filing an undertaking with the Registry of the Court within two weeks that in case the petitioner succeeds in the writ

petition, they shall refund the amount to the petitioner.

9. Accordingly, applications are disposed of.