

(2006) 09 DEL CK 0071

In the Delhi High Court

Case No : LPA 190 of 2006 and CM No. 1561 of 2006

Airport Authority of India

APPELLANT

Vs

Puran Chand and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2006) 09 DEL CK 0071

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Rajan Sabharwal, for the Appellant;

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This appeal by the Appellant employer challenges the order dated 25th October, 2005 passed by the learned Single Judge in CM No. 14753/2004 filed by the respondent/workmen u/s 17B of the Industrial Disputes Act (hereinafter referred to as the 'Act'). In response to the plea of the respondent/workmen that they were not gainfully employed during the pendency of the writ petition, the case of the appellant was that their detective agency has reported that all the respondents workmen were gainfully employed and they are the people with assets wherefrom they are deriving substantial income. This was the sole plea of the appellant in countering the claim raised by the respondents. This averment of the appellant was controverted by the respondents workmen by filing a rejoinder reiterating their assertions about their entitlement u/s 17B of the Act.

2. The learned Single has recorded the following findings:

(a) The report of the detective agency was general in nature and no specific employment of the workmen was pointed out.

(b) Respondents were stated to be subsisting on the income of the family through agriculture or by facilitating other relatives in their respective areas of

work.

(c) In respect of two of the workmen one appeared to be running a taxi and the other was working as an electrician.

(d) As explained in *Taj Services Limited Vs. Industrial Tribunal-I and Others*, and *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, such intermittent employment and engagement or assistance rendered to family members who are supporting the workmen in eking out a living cannot be held to be gainful employment which would render a workman disentitled to award of wages during the pendency of the writ petition.

The learned Single Judge while allowing the application filed by the respondents workmen u/s 17B of the Act, restricted the payment of wages only from the date of the filing of the petition. It was further directed that the amounts payable under the orders of this Court, were to be paid only on an undertaking by the respondent workmen that in the event the writ petition was decided against them, they would be liable to refund to the appellant, the differential amount between the last drawn wages and the amounts tendered pursuant to the orders of the Court.

3. The learned Counsel for the appellant submitted as under:

(a) The learned Single Judge ought to have taken up the writ petition itself for final hearing since it was already ready to be heard. In other words, the learned Single Judge need not have passed orders on the application u/s 17B of the Act when the writ petition itself could have been disposed of. He draws our attention to an order dated 30.1.2006 of this Court requesting the learned Single Judge to hear and dispose of the writ petition finally.

(b) The second plea of the learned Counsel for the appellant was that the award was passed in a case which has no legs to stand on and accordingly no orders u/s 17B of the Act ought to have been passed. In the course of such submission, the learned Counsel for the appellant sought to raise on merits of the challenge to the award.

4. We are unable to accept either of the above submissions. As regards the first submission, we are of the view that it has no merit particularly in light of the judgment of the Hon''ble Supreme Court in *Workmen represented by Workmen Represented by Hindustan V.O. Corpn. Ltd. Vs. Hindustan Vegetable Oils Corporation Ltd. and Others*, holding that Section 17B application should be disposed of with great promptitude and before the disposal of the writ petition. Paragraphs 2 and 3 of the said judgment of the Hon''ble Supreme Court read as follows:

2. The order under challenge has been passed by a Division Bench of the High Court at Calcutta. Its operative portion states that the writ petition filed by the present appellants and their application u/s 17B of the Industrial Disputes act should be disposed of together, expeditiously. We are of the view that an

application u/s 17B should be disposed of before the principal petition and it should be disposed of most expeditiously.

3. We, Therefore, set aside the order under challenge to the extent that it requires the disposal of the writ petition and the Section 17B application together and we direct that Section 17B application should be disposed of with great promptitude and before the disposal of the writ petition.

Accordingly, this plea of the learned Counsel for the appellant cannot be entertained. We may add that the earlier order dated 30.1.2006 was made without noticing the above decision of the Hon''ble Supreme Court, which is binding on this Court.

5. As regards the second plea, it is necessary to first set out Section 17B of the Act which reads as under:

17-B. 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.

6. It is settled law as noticed rightly by the learned Single Judge that Section 17B is a provision which provides for sustenance to a workman who succeeds in securing an reinstatement from the Industrial Tribunal during the pendency of a writ petition before the High court or the Supreme Court. This has also been held by the Hon''ble Supreme Court in the case of AIR 1998 511 (SC) :

7...The objects and Reasons for enacting the said provisions were as follows:

When Labour Courts pass award of reinstatement, these are often contested by an employer in the Supreme Court or High Court. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. It was, Therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or the High Courts.

It would thus appear that the object underlying the enacting of the provisions contained in Section 17B is to give relief to the workman in whose favor an

award of reinstatement has been passed by the Labour Court and the said award is under challenge in the High Court or this Court. The said relief has been given with a view to relieve the hardship that would be caused to a workman on account of delay in implementation of the award as a result of the pendency of the proceedings in the High Court or this Court. The question for consideration is: what is the extent to which such relief has been granted to a workman under this provision? The Objects and Reasons do not indicate an answer to this question and its answer has to be found in the provisions of the enactment. Since the expression 'full wages last drawn' in Section 17B has been construed by the various High Courts in the decisions referred to above we would briefly refer to the same.

The underlined portion of Section 17B of the Act as extracted above, clearly shows that what entitles the workman to subsistence wage is his employment in an establishment. This as has already been noticed earlier self-employment to sustain oneself. Furthermore, it was clearly laid down in the above decision that the payment under S. 17B has to be from the date of the award though the impugned order grants such payment only from the date of the petition. The position of law has been explained by this Court by a Division Bench in *D.D.A v. Omvati* (decision dated 19.12.2002 in LPA 84/2002) and recently by a learned Single Judge in *Hindalco Industries Ltd. Vs. Suman Lata Tuteja and Others*, .

7. Even on the merits of the application u/s 17B in the instant case, the appellant's submission is without merits. In *Taj Services Limited Vs. Industrial Tribunal-I and Others*, it was held as under:

... Under the proviso of Section 17B of the Industrial Disputes Act what is required to be proved by the employer is that the workman had been employed in an establishment and had been receiving adequate remuneration from such employment. Being employed for remuneration in an establishment means employment under another employer. It is different from running one's own business or trade in order to remain alive to see the end of the litigation. Hence I accept the contention of the learned Counsel for workmen that respondents 2, 4 and 10 cannot be denied the benefit u/s 17B of the Industrial Disputes Act on the ground that they are running their own business and are receiving profit from such business.

8. In *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, , the Supreme Court held as under:

21. It was next contended on behalf of the appellant that reinstatement with full back wages be awarded to him. Mr. P.K. Jain, learned Counsel for the employer countered urging that there is evidence to show that the appellant was gainfully employed since the termination of service and Therefore he was not entitled to back wages. In support of this submission Mr. Jain pointed out that the appellant in his cross-examination has admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his

family by helping his father-in-law Tara Chand who owns a coal depot, and that he and the members of his family lived with his father-in-law and that he had no alternative source of maintenance. If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be a gainful employment. The gross perversity with which the employer had approached this case has left us stunned. If the employer after an utterly unsustainable termination order of service wants to deny back wages on the ground that the appellant and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tara Chand who had a coal depot, it cannot be said that the appellant was gainfully employed. This was the only evidence in support of the submission that during his forced absence from service he was gainfully employed. This cannot be said to be gainful employment so as to reject the claim for back wages. There is no evidence on the record to show that the appellant was gainfully employed during the period of his absence from service. Therefore, the appellant would be entitled to full back wages and all consequential benefits.

While the above position of law was laid down in the context of reinstatement and an award of back wages, we are of the view that they provide a relevant insight into the issue of self-employment and its effect on the effect of such self employment on the issue of recompense for the period of unemployment pending litigation.

9. In the instant case as well it has been found that the workmen were, if at all, involved in intermittent employment and the appellant has failed to show that any of them was gainfully employed in an establishment disentitling them to the relief u/s 17B.

10. It was finally urged by Mr. Sabharwal, learned Counsel for the appellant that a proposal was made by the appellants to the Respondents to settle the disputes by offering to pay them the retrenchment compensation and that when the writ petition was listed before the learned Single Judge on 4.9.2006, the counsel for the Respondent workmen had sought time to seek instructions from his clients. It was submitted that since the writ petition is now listed for final arguments on 26.9.2006, this appeal should be deferred to some date thereafter. We are unable to agree to this request. As already pointed out by us the claim for the benefit u/s 17B of the Act ought not to be postponed till the disposal of the writ petition as explained by the Hon"ble Supreme Court in Hindustan V.O. Corporation Ltd. (supra). However, the disposal of this appeal, will not come in the way of parties, if they so choose, to arrive at a settlement. Any payment made in terms of the impugned order of the learned Single Judge u/s 17B of the I.D. Act would obviously be adjusted against any payment that may be agreed to be made by the appellant to the Respondents consequent upon such settlement.

11. In view of the above, we are in entire agreement with the view taken by the learned Single Judge and are satisfied that no cause or occasion arises for

interference with the impugned order of the learned Single Judge.

12. The appeal is accordingly dismissed.