
(2012) 10 DEL CK 0069
In the Delhi High Court
Case No : LPA No. 282 of 2012

Delhi Technological University

APPELLANT

Vs

Dinesh Kumar

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2013) 137 FLR 442 : (2013) 2 LLJ 472

Hon'ble Judges : Rajiv Sahai Endlaw, J;D. Murugesan, J

Bench : Division Bench

Advocate : Avnish Ahlawat and Ms. Latika Chaudhary, for the Appellant; Rajiv Agarwal and Mr. Anuj Agarwal, for the Respondent

Judgement

Rajiv Sahai Endlaw, J

1. This intra-court appeal impugns the order dated 29.02.2012 of the learned Single Judge allowing the application of the respondent u/s 17B of the Industrial Disputes Act, 1947 by directing the appellant to pay last drawn wages or minimum wages fixed by the Competent Authority from time to time, whichever is higher from the date of the Award i.e. 02.12.2004 till the disposal of the writ petition. Notice of the appeal was issued. The counsel for the respondents, on 16.04.2012 made a statement that the respondent during the pendency of this appeal shall not enforce the order u/s 17B of the I.D. Act. The parties were referred to mediation, which has been unsuccessful. The counsels have been heard.

2. The counsel for the appellant has argued, that the respondent in his application u/s 17B of the I.D. Act stated that he was not gainfully employed in any establishment since the termination of his services by the appellant and was depending on his friends and relatives for his household expenses; that though it is very difficult for any employer to find out about the employment of a dismissed workman but the appellant still made efforts which revealed that the respondent workman was earlier working with a Reliance Company in Vijay Building, Bara

Khamba Road, New Delhi and has now joined Vatnavi Company in Gopal Das Building, Delhi and is maintaining a mobile having No. 9953305658 and stated so in its reply to the application u/s 17B of the I.D. Act; that the respondent in his rejoinder admitted having worked earlier with Reliance Company and subsequently with Vatnavi Company but only as intermittent / casual / substitute on Saturdays and Sundays for Rs. 150/- per day and that too subject to availability of work. It is further argued that the said admission of the respondent workman in rejoinder showed the falsity of the statement in the application u/s 17B of the I.D. Act. It is yet further argued that though the writ petition challenging the Award dated 02.12.2004 was filed in the year 2006 and counter affidavit thereto was also filed by the respondent in the year 2006 only but the application u/s 17B of the I.D. Act was filed after three years, in the year 2009. It is contended that the same also showed that the respondent workman was employed and had a source of income and the application u/s 17B of the I.D. Act was an afterthought. Alternatively, it is contended that the direction for payment u/s 17B of the I.D. Act could not have been from the date of the Award and at best could only be from the date of the application u/s 17B of the I.D. Act.

3. Per contra, the counsel for the respondent workman has argued that such a casual employment on weekends, from which the respondent at best earning Rs. 450/- to Rs. 600/- per month could not be called gainful employment within the meaning of Section 17B of the I.D. Act and such as was required to be disclosed in the application. As to the aspect of delay, it is contended that the same was not argued before the learned Single Judge. Reliance even otherwise is placed on Airport Authority of India Vs. Puran Chand and Others and on Delhi Transport Corporation Vs. Inderjeet Singh , both of Division Benches of this Court to contend that delay in filing the application is immaterial.

4. The learned Single Judge in the impugned order has not dealt with the aforesaid arguments though we find the same to be arising from the pleadings in the application u/s 17B of the I.D. Act.

5. A Division Bench of this Court in Municipal Corporation of Delhi Vs. Santosh Kumari and Another has held that where there is unexplained delay in filing the application u/s 17B of the I.D. Act, this Court is empowered to direct payment from the date of the application and not from the date of the Award.

6. The counsel for the respondent workman has argued that the appellant itself had delayed filing of the writ petition for over one year and the respondent workman cannot be deprived of the 17B wages for the said period. It is further contended that the application was not filed along with the counter affidavit as the respondent workman was expecting the writ petition to be decided expeditiously and was filed when found that the writ petition was not being disposed of.

7. We are not satisfied with the explanation given by the respondent workman for delay in filing the application u/s 17B of the I.D. Act. Even if there was delay

by the appellant in filing the writ petition, that was no cause for the respondent workman to not immediately file the application u/s 17B of the I.D. Act. Moreover, the liability of the employer u/s 17B of the I.D. Act accrues only after challenge is made to the Award of the Industrial Adjudicator of reinstatement. There indeed is undue delay in filing the application u/s 17B of the I.D. Act. We thus do not find the respondent workman to be entitled to 17B wages from the date of the Award.

8. As far as argument of the appellant of concealment by the respondent workman of the true state of affairs is concerned, though the Bombay High Court in U.P. State Bridge Corporation Limited Vs. Maharashtra General Kamgar Union, has held that a workman, in an application u/s 17B of the I.D. Act, has to make a clean breast of the state of affairs and to disclose all aspects of his employment including as to self employment but since the appellant also has been unable to rebut the plea of the respondent workman of his employment being only casual / intermittent and against vacancy, we are of the view that the punishment of depriving the respondent workman altogether from Section 17B wages for not having made a clean breast of the state of affairs would be too harsh and the ends of justice would be served by directing payment as aforesaid from the date of the application and by further directing expeditious disposal of the writ petition. We accordingly, partly allow this appeal and modify the order dated 29.02.2012 of the learned Single Judge by directing payment u/s 17B of the I.D. Act not from the date of the Award but from the date of filing of the application u/s 17B of the I.D. Act and request the learned Single Judge to dispose of the writ petition which in any case is of the year 2006 within three months of today. We grant liberty to the appellant to approach the learned Single Judge for fixing a date of hearing.

The appeal is disposed of.

No costs.