
(2008) 03 DEL CK 0131

In the Delhi High Court

Case No : C.M. 14367 of 2005 in Writ Petition (C) No. 19741 of 2004

Delhi Transport Corporation

APPELLANT

Vs

Shri Braham Prakash

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Citation : (2008) 03 DEL CK 0131

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Arati Mahajan, for the Appellant; Deepti Yadav, for the Respondent

Judgement

Anil Kumar, J.—This is an application by the respondent/applicant u/s 17B of Industrial Disputes Act, 1947 seeking direction to the petitioner to pay the wages not less than the minimum wages from the date of the award till the final disposal of the writ petition.

2. The case of the respondent/applicant is that the application of the petitioner u/s 33(2)(b) of the Industrial Disputes Act, 1947 was dismissed by order dated 31st March, 2003 which is impugned by the petitioner in the present writ petition. The operation of the impugned order dated 31st March, 2003 was stayed by this Court by order dated 11th January, 2005.

3. The applicant has relied on Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , holding that that once the application of the management for approval of its action is dismissed by the Tribunal, the workman is deemed to be in the service of the management and for that no separate order of reinstatement is required.

4. The applicant stated that he has not been employed in any establishment anywhere for any period of time, after passing of the impugned order dated 31st March, 2003 till date. Due to his unemployment he is facing extreme hardships to support himself and his family members and he is totally dependent upon his wife who is doing all kinds of odd jobs to keep the family members surviving and

he has failed to ensure for himself and his family an existence worthy of human dignity. The applicant stated that his last drawn wages were Rs. 2593/- and current wages as fixed and revised from time to time against the said post is Rs. 3600.00 approx. The applicant has also undertaken to refund any amount which is given to him u/s 17B beyond the wages last drawn if ordered by this Court. An affidavit has also been filed by the respondent stating that at the time of termination of his services he was drawing salary of Rs. 2593/- PM and from the time of termination of his services he has not been employed in any establishment.

5. The application is contested by the petitioner alleging that the impugned order is illegal and arbitrary and liable to be set aside. It is pleaded by the petitioner that the impugned order was stayed by the Order dated 11th January, 2005 which has not become final and respondent is not entitled for reinstatement, nor can he be deemed to be in service. The petitioner vehemently denied that workman is unemployed after passing the impugned order till date. The petitioner has contended that in the application it is stated that the applicant is unemployed since the date of passing of impugned order, however, in the affidavit it is deposed that the applicant is unemployed since the date of termination of his services. The petitioner contended that it is settled law, any payment made u/s 17B at the rate of minimum wages shall be made subject to furnishing of security towards the differences in the minimum wages and the last drawn wages and the said differences shall be refunded by the workman if the writ petition is allowed. The petitioner also contended that if the management has challenged the award of the labour court, a workman who has obtained direction for reinstatement in service is entitled to full wages last drawn or full wages which would have been drawn under Minimum Act whichever is higher, however, directions for refund or recovery in the event of the award being set aside should be made and it would be open to the court to pass appropriate orders depending on the facts of each case as to in what form restitution has to be secured. The petitioner contended that the workman is not entitled for any relief as prayed in the application.

6. A full bench of this Court in (2005) III LLJ Delhi 390 in the matter of Delhi Transport Corporation v. Jagdish Chander had held that the provision of Section 17B of the Act will be applicable to the writ petition filed against the order passed on the application of the management u/s 33(2)(b) of the Industrial Disputes Act, 1947. Referring to various decisions, the full Court had held that the emphasis of the legislature in Section 17B was on the expression `reinstatement rather than on award and cumulative effect of Sections 2(b) and 2(k) defining award and `industrial dispute demonstrated that the expressions has been widely worded to take within their ambit duties relatable to any person who satisfied the conditions stated therein. Consequently the plea of the petitioner that the provision of Section 17B are not available to the respondent since there is no award, is not sustainable and is rejected holding that the respondent is entitled for the benefit of Section 17B of the Industrial Disputes Act, 1947

provided he is unemployed.

7. Granting relief u/s 17B of the Act and passing orders directing payment of wages last drawn, is generally the rule; refusing to grant relief u/s 17B is an exception, as it could be passed only in the rarest of the rare cases of jurisdictional error where there is no relationship between the parties. In the present case this has not been disputed that there is a relationship of employee and employer between the petitioner and the applicant. While considering an application under this provision it is necessary to bear in mind that the spirit, intent and object underlying the statutory provision of Section 17B, is to mitigate and relieve, to a certain extent, the hardship resulting to a workman due to delay in the implementation of the consequence of dismissal of the application of the petitioner resulting into reinstatement of his services on account of the challenge made to it by the employer. The preliminary consideration for making available such a relief to a workman is to be found in the benevolent purpose of the enactment. It recognizes a workman's right to the bare minimum to keep body and soul together when a challenge has been made to the order passed by the Labor Court. The statutory provisions provide no inherent right of assailing an order or an award by an industrial adjudicator by way of an appeal. The payment which is required to be made by the employer to the workman has been held to be akin to a subsistence allowance which is neither refundable nor recoverable from a workman even if the petitioner is allowed by the High Court. In AIR 1998 511 (SC) the Apex Court was of the view that the object u/s 17B of the Industrial Disputes Act, 1947 is only to relieve to a certain extent, the hardship that is caused to the workman due to the delay in implementation of the Award. The practice of disposal of the petition as well as the application u/s 17B of the Act contemporaneously was deprecated and the High Court was directed to first expeditiously dispose of the application u/s 17B by the Supreme Court by its decision reported at *Workmen Represented by Hindustan V.O. Corpn. Ltd. Vs. Hindustan Vegetable Oils Corporation Ltd. and Others*,

8. Since the section itself mentions employment in establishment self employment quite apparently is not in contemplation. Workman can be denied the benefits u/s 17B of the Industrial Disputes Act only when it is proved to the satisfaction of the Court that the workmen have been employed and have been receiving adequate remuneration during the period of pendency of the writ petition. It is thus well settled that transient employment by the workman does not affect his entitlement to receive wages pending decision; that is to say that, the benefit of Section 17B of the Act cannot be denied merely because the workman is engaged in some activity or in some vocation to eke out his livelihood. Such relief can be denied only if it is proved that the workman is gainfully employed in some establishment and is receiving adequate and regular remuneration which is not the case with the applicant. In the present case the petitioner has not been able to show that the workman is gainfully employed in any establishment and the respondent No. 1 has contended on affidavit that he is

unemployed since the date of his dismissal from the service.

9. Whether the applicant is entitled for last drawn wages or something more. In *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, it was held by the Apex Court that a workman has a legal right to wages under the Minimum Wages Act, 1948 and cannot be diverted to a remedy u/s 20 of the Minimum Wages Act for enforcing such right. In this case, the Apex Court was concerned with the power of the Act u/s 33(C)(2) of the Industrial Disputes Act, 1947 and the principles laid down by the Court would have a bearing on the issues raised before this Court as well. From a conspectus of the authoritative pronouncements of the Apex Court, the right of a workman to an amount equivalent to the wages notified under the Minimum Wages Act, 1948 is thus, in fact, recognition of the constitutional mandate and nothing more. It is undoubtedly, the bare minimum which is required by the workman to subsist and is nothing more. Full wages last drawn can Therefore only mean all the wages that have fallen due at least from the date of the order of the Labor Court dismissing the application of the management u/s 33(2)(b) of the Act.

10. In the present case the workman has categorically averred in the application that he has been unemployed since the date of the dismissal of the application of the petitioner u/s 33(2)(b) of the Act till date and even from the date of termination of his services. The petitioner has not been able to show that the applicant is gainfully employed so as not entitled for benefit u/s 17B of the Act. The applicant has also stated that he will undertake to refund any amount paid over and above the last drawn wages in case the writ petition is allowed. In the circumstances, the applicant fulfills the requirement of Section 17B of the Act so as to be entitled for last drawn wages or minimum wages whichever is higher during the pendency of the present writ petition.

11. For the foregoing reasons, the application of the workman/respondent u/s 17B of the Industrial Disputes Act, 1947 is allowed and the petitioner is directed to pay the arrears of last drawn wages or the minimum wages, whichever is higher, from 31st October, 2003. Arrears be paid within eight weeks. The petitioner shall continue to pay last drawn wages or the minimum wages, whichever is higher, by 15th of every English calendar month. The respondent is also directed to give an undertaking that in case the writ petition is allowed, the difference in last drawn wages and the minimum wages shall be repaid/refunded by the respondent/workman within such time as may be permitted by this Court. The undertaking by the applicant be filed within four weeks.

With these directions, the application is disposed of.

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Learned Counsel for the petitioner states that rejoinder has been filed, which is not on record. Counsel to take steps to have it placed on record.

List on September 22, 2008.