

(2007) 03 CAL CK 0060

In the Calcutta High Court

Case No : C.A.J.O.S.G.A. No. 2878 of 2005, A.P.O. No. 417 of 2005 and W.P. No. 771 of 2004

Dilip Dey

APPELLANT

Vs

Manasi Press and Others

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2008) 3 LLJ 162

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Alok Banerjee and Bijay Kumar, for the Appellant;Nayan Rakshit, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal has been preferred from the judgment and order dated May 20, 2004 passed by the learned single Judge in G.A. No. 1997/2004 in connection with W.P. No. 771/2004 whereby and whereunder the learned single Judge disposed of the application for interim payment u/s 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act") without issuing any direction upon the employer to make payment of any amount to the concerned employee pending the proceeding.

2. The provision regarding payment of full wages to the workman during pendency of the proceeding in higher Courts, had been specifically provided in Section 17B of the said Act which is quoted hereinbelow:

17-B. Payment of full wages to workman pending proceeding 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 has 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 maybe.

3. The learned Counsel of the respondent-Company, however, submits that the petitioner was gainfully employed as a driver of Matador Van and Taxi and also sometimes as a personal driver of an individual person, although the owners of the said vehicles did not grant any certificate.

4. The averments made in the Affidavit-in-Opposition in this regard on behalf of the respondents are quoted hereunder:

3(m) On enquiry it transpired that the appellant is working as a driver in the Matador van sometimes and sometime as a taxi driver and sometime as the personal driver of an individual person. Inspite of best efforts, the owner of the said vehicle did not grant any certificate.

5. Mr. Mukherjee, learned Counsel of the respondents, also submits that the appellant herein used to work under one Sri Partha Mukherjee as his personal driver, on temporary basis from November 20, 2001 to October 11, 2002 which has, however, been denied by the appellant herein.

The said Sri Partha Mukherjee also issued a certificate to the effect that the appellant herein was engaged as a driver under him on temporary basis during November 20, 2001 to October 11, 2002. But no other document has been produced, wherefrom it would appear that the said appellant received any salary from said Partha Mukherjee upon putting his signature or at least L.T.I. in acknowledgement of receipt of such salary. The aforesaid certificate, therefore, cannot be accepted as a proper and valid document in order to prove the engagement of the appellant as a driver by said Sri Partha Mukherjee.

6. In view of the aforesaid circumstances, we are of the opinion that the right of the appellant to receive payment during pendency of the proceeding before higher Courts in terms of Section 17B of the said Act cannot be denied.

7. Accordingly, we direct the respondents herein to pay the appellant full wages last drawn by him along with other admissible allowances from the date of filing of the writ petition in compliance with the provisions of Section 17B of the said Act.

8. The respondents herein are directed to make payment of the entire arrears of salary and other admissible allowances to the appellant within four weeks from

date positively and thereafter the said respondents will go on making payment of salary and other admissible allowances to the said appellant month by month regularly.

9. The learned advocate of the respondents, however, submits that the last salary drawn by the appellant has not yet been determined which in our opinion is not correct.

10. In the impugned order dated May 20, 2004 passed by the learned single Judge, the salary last drawn by the appellant herein has been specifically mentioned as Rs. 2,400/- per month.

11. In view of the aforesaid direction the appellant (sic) herein will be entitled to withdraw the entire amount deposited earlier by the said respondents towards the arrear salaries of the appellant herein from the concerned bank.

12. This appeal, therefore, stands allowed.

13. There will, however, be no order as to costs.

14. All parties concerned are to act on a xeroxed signed copy of this order on the usual undertaking.