

(2006) 04 DEL CK 0061

In the Delhi High Court

Case No : CM No. 48 of 2005 in Writ Petition (Civil) No. 2211 of 1998, CM No. 5169 of 2004 in Writ Petition (Civil) No. 52 of 1997 and CM No. 10456 of 2004 in Writ Petition (Civil) No. 9491 of 2004

Food Craft Instt.

APPELLANT

Vs

Rameshwar Sharma and Another
 Kishan Lal and Sons
Vs Govt. of. NCT. of Delhi and Others
 Nisshoiwai
Corporation Vs Delhi Admn. and Others

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 136, 151, 153
Constitution of India, 1950 — Article 136, 14, 226, 23
Hindu Adoptions and Maintenance Act, 1956 — Section 20
Industrial Disputes (Amendment) Act, 1982 — Section 17B
Industrial Disputes Act, 1947 — Section 10(1), 10A, 11A, 12(5), 17A
Industrial Employment (Standing Orders) Act, 1946 — Section 10A
Minimum Wages Act, 1948 — Section 20

Citation : (2006) 134 DLT 49 : (2007) 2 LLJ 350

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : S.N. Bhandari and Amit Seth, for the Appellant; Jayant Mehta, in CM No. 48/2005 in Writ Petition (Civil) No. 2211/1998, H.K. Chaturvedi, B.K. Pandey, S.K. Shukla for the respondent No. 3 in CM No. 5169/2004 in Writ Petition (Civil) No. 52/1997 and M.P. Raju and Sudharshan Rajan in CM No. 10456/2004 in Writ Petition (Civil) No. 9491/2004, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—These applications raised questions as to the jurisdiction of this Court to grant relief to a workman on his application seeking grant of wages during the pendency of the management's challenge to industrial awards in favor of the workman directing his reinstatement into service. Inasmuch as counsels have urged identical issues of law, these applications are being taken up for decision together. A composite view with regard to the jurisdiction of this Court covering different aspects of this principal question has been required to be

considered. Before proceeding to consider the individual fact situation and relief sought in these three applications, it would be appropriate to consider the general principles of law which have been evolved by the courts.

2. The issue of permissibility of grant to interim relief to a workman in the nature of wages in petitions before either the Apex Court or the High Court under its jurisdiction under Article 226 of the Constitution of India assailing an award directing reinstatement in service has been made in favor of a workman has arisen before the Supreme Court and the High Courts in several cases. The law on every aspect of the matter is well settled. However discretion has been left to the court so far as the quantum of wages to be given to the workman as an interim measure and the date from which such relief is to be given to the workman. This area remains contentious and elaborate arguments are addressed on this issue.

3. The statutory powers to grant interim relief by this Court is derived from Section 17B of the Industrial Disputes Act, 1947. In order to appreciate the respective contentions of both parties, it would be useful to set out the relevant statutory portion in extenso:

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.

4. A question has also been repeatedly raised as to the jurisdiction of a High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, to grant interim relief beyond the restrictions of Section 17B of the statute.

5. The provisions of Section 17B of the Industrial Disputes Act, 1947 comes into operation when an Award directing reinstatement of a workman is assailed in further proceedings. The statute requires satisfaction of the following four conditions:

(i) an Award by a Labour Court, Tribunal or National Tribunal directing reinstatement of a workman is assailed in proceedings in a High Court or the

Supreme Court;

(ii) during the pendency of such proceedings, employer is required to pay full wages to the workman;

(iii) the wages stipulated u/s 17B are full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any Rule;

(iv) such wages would be admissible only if the workman had not been employed in any establishment during such period and an affidavit had been filed to such effect ;

6. While considering the contentions urged it is necessary to bear in mind that the spirit, intendment 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 an award directing reinstatement of his services on account of the challenge laid to it by the employer. While enacting Section 17B, the parliament thought it proper to limit relief there under to the extent of wages which were drawn by the workman when he was in service when his services were terminated, and Therefore used the expression "full wages last drawn".

7. The preliminary consideration for making available such a relief to a workman is to be found in the benevolent purpose of the enactment. It recognises a workman's right to the bare minimum to keep body and soul together when a challenge has been laid to an Award directing his reinstatement. The statutory provisions provide no inherent right of assailing an order or an award by an industrial adjudicator by way of an appeal. Examination of the statutory provisions of appeal in revenue matters would show that pre-deposit of the impugned levy prior to consideration of an appeal is the statutory mandate.

8. Upon consideration of these issues, by judicial interpretation, a workman's right to grant of interim wages, when an award in his favor directing reinstatement is challenged before the High Court or before the Apex Court, has been expanded and recognised as an integral part of the inherent power of the court under Article 226 of the Constitution of India to grant appropriate interim/pendentelite relief to a workman, having regard to the fact situation placed before the court. By judicial interpretation the jurisdiction of the court or the admissible relief which is to be granted as an interim order has been held to be beyond the parameters of and the restrictions placed on the court u/s 17B of the Industrial Disputes Act.

9. 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 Award in his favor is set aside by the High Court.

10. The expression full wages in Section 17B would mean such emoluments as are included in wages as defined in Clause (rr) in Section 2 of the Act and it has

been held that the Parliament has used the word "full wages last drawn" indicating that wages are those that were actually paid and not the amount that would be payable are required to be paid. This principle was laid down in AIR 1998 511 (SC) The Apex Court overruled the judgments of the High Court of Karnataka in the judgment reported at M/s Visveswaraya Iron and Steel Co. Ltd. Vs. M. Chandrappa and another, in Visveswaraya Iron and Steel Limited M. Chandrappa and by the High Court of Gujarat in 1995 (2) Guj.LR 1362 entitled Kirtiben B. Amin v. Mafatlal Apparels giving an extended meaning to the expression "full wages last drawn" as to mean wages drawn on the date of termination of the services plus the annual increment and the dearness allowance to be worked out till the date of the award.

11. In 1994 (2) LLN 834 entitled Carona Sahu Company Limited v. Abdul Karim Manafkhan, a judgment of the Bombay High Court; the pronouncement of the High Court of Judicature at Madras reported at 1995 (1) LLN 1014 in the case entitled P. Chennaiah Vs. Deputy Executive Engineer and Others, entitled P. Chennaiah v. Dy. Executive Engineer it had been held that u/s 17B, the workman was entitled to the full wages which the workman would have drawn in pursuance of the Award, implementation whereof is suspended during the pendency of the proceedings. This view was also overruled by the Apex Court in Dena Bank v. Kirti Kumar (supra) observing that the plain and material meaning of the expression "full wages last drawn" has to be given.

12. In so holding 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. While consideration of the payment which is required to be made by the employer to the workman in this behalf, the Apex Court observed as follows:

21. As indicated earlier Section 17B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the Award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character, Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and Therefore used the words "full wages last drawn". To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or the Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has

been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside, it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover he said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17B to cast such a burden on the employer. In our opinion, Therefore, the words "full wages last drawn" must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in Visveswaraya Iron & Steel Ltd. or the Bombay High Court in Corona Sahu Co. Ltd.

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23. As regards the powers of the High Court and the Supreme Court under Article 226 and 136 of the Constitution, it may be stated that Section 17B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge tot he award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pas an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be dehors the provisions contained in Section 17B and while giving the direction, the court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. that in exercise of the power under Articles 226 and 136 granted u/s 17B. The conferment of such a right u/s 17B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Article 226 and 136 of the Constitution.

13. Therefore, the jurisdiction of the High Court to make an appropriate order granting interim wages to a workman who has an award directing his reinstatement into service is derived not only from Section 17B of the Industrial Disputes Act, 1947. Such source of power is to be found in the inherent power of the High Court to grant and mould appropriate interim relief in exercise of its jurisdiction under Article 226 of the Constitution which is called upon to test the legality and validity of industrial awards.

14. These issues arose for consideration before the Apex Court in JT 2001 1 (Supp.) SC 229 entitled Regional Authority, Dena Bank and Anr. v. Ghanshyam. After a discussion and reiteration of the principles laid down in the prior judgments, the court cautioned that the interests of the employer could not be ignored and held thus:

12. We have mentioned above that the import of Section 17B admits of no doubt

that Parliament intended that the workman should get the last drawn wages from the date of the Award till the challenge to the Award is finally decided which is in accord with the Statement of the Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17B was inserted in the Act. We have also pointed out above that Section 17B does not preclude the High Courts or this Court from granting better benefits "more just and equitable on the facts of a case" than contemplated by that provision to a workman. By interim orders the High Court did not grant relief in terms of Section 17B, nay, there is no reference to that Section in this case the question of payment of "full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

15. Upon consideration of the facts before it, the Supreme court passed the following directions to do justice between the parties:

13. It must, however, be pointed out that while passing an interlocutory order the interests of the employer should not be lost sight of. Even though the amount paid by the employer u/s 17B to the workman cannot be directed to be refunded in the event he loses the case in the writ petition (see Dena Bank case) any amount over and above the sum payable under the said provision, has to be refunded by him. It will, Therefore, be in the interests of justice to ensure, if the facts of the case so justify, that payment of any amount over and above the amount payable u/s 17B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same.

14. It is brought to our notice that pursuant to the orders of the High Court under challenge the appellant had paid the amount to the respondent. It is clarified that if the appellant succeeds in the writ petition, it will be entitled to recover the difference of amount (i.e. amount paid under the impugned order less the amount payable u/s 17B of the Act) from the respondent in accordance with law.

16. So far as the expression "gainful employment in an establishment" is concerned, it has been held by the courts that the self-employment too is not employment in an establishment. This question fell for consideration before the Apex Court in Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, while considering the question relating to award of back wages, the court noticed thus:

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 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 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.

On the same issue, in DTC v. The Presiding Officer, Labour Court No. 1, Delhi and Ors. 2002 II AD (Delhi) 112, it was held by this Court as hereafter:

13. It is Mr. Sabharwal's contention that this precedent would not be applicable because the court was considering the grant of full back wages and Section 17B of the I.D. Act had not been called into question. However, as I see it, since the above opinion has been expressed in the context of the Labour Court/Tribunal having granted reinstatement with fullback wages, the observations in Rajinder Kumar Kindra's case (supra) would apply a fortiori to all cases where this Section has been invoked. Furthermore, the right of an appeal has been taken away by an amendment to the Industrial Disputes Act, and Section 17B of the I.D. Act has been introduced. The legislature intended a finality in the determination of the dispute by the Industrial Tribunal/Labour Court and to impart the narrow interpretation advocated by Mr. Sabharwal would wholly emasculate the statute. Even where an appeal is permitted from a money decree the jural rule is that a stay against payment/deposit of the decretal amount should not be given. All the more so when a person's livelihood and his existence is at stake. If a workman's income from transitory work is to be taken into consideration because the Section envisages only subsistence, the logical extension of the argument is that in all cases where subsistence allowance is to be granted, the alternative and other income of the delinquent workman/officer should also be investigated and then adjusted. Is the employer to be allowed to circumvent his liability to pay the subsistence allowance because the employee has an income from sources other than his salary. No such argument has as yet been advanced in service law, quite obviously because of its inherent absurdity. Section 17B of the I.D. Act is attracted as soon as it is stated on affidavit that the concerned workman has not been "employed in any establishment." The

legislature could have simply stated that it is attracted only if the workman has had no earnings in the said period. Alternatively the legislature need not have specified that the employment should be in "an undertaking", thereby leaving room for the Courts to construe the word "employment" as synonymous with "self-employment". In the proviso to the Section instead of "remuneration", the words "earnings" or "income" could have been employed. Apart from Rajinder Kumar Kindra's case (supra) it has been held in *Taj Services Limited v. Industrial Tribunal-1 and Ors.* 2000 I LLJ 198, that "under the proviso to Section 17B of the Industrial Disputes Act what is required to be proved by the employer is that the workman had been employed in any 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 need of the litigation. Hence I accept the contention of the learned Counsel for workman 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." Although the question in *M/s Singareni Collieries Co. Ltd. v. Sk. Anwar Basha and Ors.* 1996 III L.L.J. 971 related to back wages which in the opinion of the Division Bench excluded "employment for short periods in order to save himself from starvation", the reasoning would also apply a fortiori to the present case. A Division Bench of the Kerala High Court in *K. Jayaraman Vs. Quilon Gas Service and Another*, has held that "despite the counter affidavit, there is no acceptable evidence to hold that the appellant was employed in the garment making unit of his wife. Assuming that he was so employed there is hardly any evidence with regard to the adequacy of the remuneration which he had obtained from that concern. Even if it is assumed that the appellant was getting some income from auto-rickshaws as alleged in the counter-affidavit, it would not be sufficient to hold that the proviso to Section 17B is attracted," Self-employment quite apparently is not in contemplation since the Section itself mentions "employment in any establishment".

17. In *Taj Services Limited Vs. Industrial Tribunal-I and Others*, it has been held that:

6. Workmen 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. In the case of workmen other than respondent Nos. 2, 4 & 10 there is no allegation by the management that they have been employed and have been receiving adequate remuneration during the pendency of the writ petition. Even in the case of the respondent Nos. 2, 4 & 10 the allegation is that they are running their own business but the said allegation is denied by the learned Counsel for the respondents. According to the learned Counsel for the respondents, even if the survival of himself and his family, it will not disentitle the workman for the benefits u/s 17B of the Industrial Disputes

Act. The learned Counsel for the respondents also contended that the proviso to Section 17B of the Industrial Disputes Act would be attracted only in the case of the employment under another employer and receiving adequate remuneration. I find force in the contention of the learned Counsel. As per Section 17B the workman is required to file an affidavit to the effect that he had not been "employed in any establishment". Hence under the proviso to Section 17B of the Industrial Disputes Act what is required to be proved by the employer is that the workman had been employed in any 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.

7. At any rate, apart from the averments in the reply of the employer, there is no sufficient material before this Court to come to the conclusion that respondent Nos. 2, 4 and 10 have been running the alleged business. Also there is nothing to prove that they have been receiving adequate remuneration. Once the workman has filed an affidavit to the effect that he had not been employed in any establishment during the period of pendency of the proceedings in Court, the onus is on the employer to prove to the satisfaction of the Court that the workman had been so employed and had been receiving adequate remuneration. In this case the employer has not discharged his duty of proving to the satisfaction of this Court that the above mentioned three workmen had been employed in any establishment and had been receiving adequate remuneration during the pendency of the writ petition. Hence I do not find any reason to deny the benefits of Section 17B of the Industrial Disputes Act to the workmen including respondent Nos. 2, 4 & 10.

18. It would be useful to advert to the pronouncement of this Court reported at 109 (2004) DLT 1 entitled *M/s Birdhi Chand Naunag Ram Jain v. P.O., Labour Court No. IV and Ors.*. In this case in answer to the workman's application u/s 17B of the Industrial Disputes Act, 1947 management allegation that the workman was selling miscellaneous items in front of Birla Mandir, New Delhi, the workman filed a rejoinder that the amount generated by this activity was not sufficient to sustain his family. Upon consideration of the rival contentions and judicial pronouncements on this issue, the court held thus:

In any event, self-employment is not a norm for denying back wages as the Section 17B of the ID Act clearly stipulates employment in an establishment. Respondent No. 3/applicant is clearly not employed in any establishment. If in order to sustain himself, the respondent No. 3 enters into a self-employed vocation, it cannot be termed as 'employment in an establishment' contemplated by Section 17B of the ID Act. However, Therefore the plea of Mr.

Sabharwal which merits consideration is that the writ petition was filed in September, 1999 and the application u/s 17B of the ID Act was filed only on 1st September, 2001. There is no Explanation given for this delay. Accordingly, payment u/s 17B is not to be made for the period starting from October, 1999 to August, 2001 as the respondent No. 3/applicant has failed to give any reason for not filing the application earlier.

19. The principles laid down in these judgments were reiterated in 2005 (8) DRJ 63 Management of Delhi Gymkhana Club Ltd. v. The Government of NCT of Delhi and Ors.

20. In this pronouncement in para 5 it was held by a learned single Judge of this Court that inasmuch as there was no concealment of material facts by the workman nor any objection in the written statement pertaining to the issue as to gainful employment of the workman during the pendency of the proceedings before the labour court, the management should be better advised to utilise the services of a workman while writ petitions are pending assailing labour or industrial awards lest the latter subsequently feels the pinch of having to pay wages to whose services have not been availed of for no fault of the workman concerned. It was held that there can be no reason to expect the workman to starve himself and his family to death because the management filed a writ petition assailing the award.

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.

21. Petitioners also oppose consideration of the application u/s 17B on the ground that they have a good case on merits and that the writ petition be first or simultaneously considered. 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,

22. While considering an application u/s 17B of the Industrial Disputes Act, the court cannot go into the merits of the case in the writ petitioner. It was so held in Anil Jain Vs. Jagdish Chander,

23. In 2000 L I.C. 3352 Prabhakar Baburao Bokde v. Bank of Baroda, Nagpur, the Apex Court set aside the rejection of the Section 17B application by a non-speaking order directed the High Court to decide the case on merits.

24. The issue that arises after consideration of such principles of law is the quantum of wages which an employer should be directed to be paid on account

of subsistence allowance which may be payable to a workman.

25. It has been urged at great length on behalf of the petitioner that the Minimum Wages Act, 1948 is not applicable as its establishment is not scheduled employment for the purposes of the enactment.

26. Mr. S.N. Bhandari, learned senior counsel for the petitioner has urged that grant of wages as an interim relief, u/s 17B of the Industrial Disputes Act beyond the last drawn wages which were being paid to the workman, is contrary to the pronouncements of the Apex Court and the applicable law.

27. It has been held that this Court under Article 226 has the jurisdiction to grant wages beyond the limits u/s 17B. There is no dispute that this Court was competent to, albeit under Article 226 of the Constitution of India, to grant interim relief beyond the parameters set down by Section 17B. This being the position, the jurisdiction and the power to grant wages in excess of last drawn wages exists.

28. Learned counsel for the workmen-applicants have submitted that the Industrial disputes remain pending before Industrial Adjudicator for over decades. The wages last drawn by the workman are rendered meaningless in the context of subsistence of the workman concerned as the cost of living index and inflation escalates. It has been contended that looked at from any angle, the only relevant index of what would be fair and just wages would be the assessment by the competent authority under the Minimum Wages Act, 1972 of the minimum wages to which a workman would be entitled.

29. In order to appreciate the respective contentions, it is necessary to understand the meaning of the expression "minimum wages and to examine the background in which the concept evolved.

30. Norms in respect of the wage policy to be followed under the Second Five Year Plan were laid down in the Tripartite Committee by the Indian Labour Conference held in New Delhi in 1957 to include the following:

(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.

(iii) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.

(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.

(v) Fuel, lighting and other "miscellaneous" items of expenditure should constitute 20 per cent of the total minimum wage.

31. I find that wage structures have been divided into three categories. "minimum wage" is such wage which provides bare subsistence and is at poverty line"; "fair wage" which is a little above the minimum wage and finally comfort level wage which is known as the "living wage". The minimum wage is restrictive and should provide not only for the bare sustenance of life but for preservation of the efficiency of the worker and provide some measure of education, medical requirements and amenities.

32. In the judgment of the Apex Court reported at *The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another*, the Apex Court cited these norms with approval and added an additional component as a guide for fixing the minimum wage which was in the nature of:

(vi) children's education, medical requirement minimum recreation including festivals/ceremonies and provision for old age marriages etc. should further constitute 25 per cent of the total minimum wage.

33. It was held by the Apex Court that a wage structure which approximately answers the six components noticed above is nothing more than a minimum wage at subsistence level. The employees are entitled to such minimum wages at all times and in all circumstances and an employer who has not paid the minimum wage should not be permitted to run the industry.

34. The concerned experts in industrial workers welfare have emphasised these standards in the matter of wage fixation in keeping true to the two points of social philosophy and economic necessities. The minimum basic wage is at the bottom of the ladder of a payment which ought to be paid to the industrial worker. The principles noticed above have received judicial recognition and approval. In the pronouncement reported at *Sanjit Roy Vs. State of Rajasthan*, it was held by the Supreme Court that provision of labour or service to any person or authority at payment which is less than the minimum wage for it, would amount to a breach of Article 23 and of the prescription of equality under Article 14 of the Constitution of India. In this behalf the court observed thus:

4. If this be the correct position in law, it is difficult to see how the constitutional validity of the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act, 1948 to the workmen employed in famine relief works can be sustained. Article 23, as pointed out above, mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage and if the Exemption Act, by excluding the applicability of the Minimum Wages Act, 1948, provides that minimum wage may not be paid to a workman employed in any famine relief work, it would be clearly violative of Article 23. The respondent however contended that when the State undertakes famine relief work with a view to providing help to the persons affected by drought and scarcity conditions, it would be difficult for the State to

comply with the labour laws, because if the State were required to observe the labour laws, the potential of the State to provide employment to the affected persons would be crippled and the State would not be able to render help to the maximum number of affected persons and it was for this reason that the applicability of the Minimum Wages Act, 1948 was excluded in relation to workmen employed in famine relief work. This contention, plausible though it may seem is, in my opinion, unsustainable and cannot be accepted. When the State undertake famine relief work, it is no doubt true that it does so in order to provide relief to persons affected by drought and scarcity conditions but nonetheless, it is work which enures for the benefit of the State representing the society and if labour or service is provided by the affected persons for carrying out such work, there is no reason why the State should pay anything less than the minimum wage to the affected persons. It is not as if a dole or bounty is given by the State should pay anything less than the minimum wage to the affected persons. It is not as if a dole or bounty is given by the State to the affected persons in order to provide relief to them against drought and scarcity conditions nor is the work to be carried out by the affected persons worthless or useless to the society so that under the guise of providing work what the State in effect and substance seeks to do is to give a dole or bounty to the affected persons. The Court cannot proceed on the basis that the State would undertake by way of famine relief, work which is worthless and without utility for the society and indeed no democratic State which is administered by a sane and sensible Government would do so because it would be sheer waste of human labour and resource which can usefully be diverted into fruitful and productive chancels leading to the welfare of the community and creation of national asset or wealth. It is difficult to appreciate why the State should require the affected persons to provide labour or service on work which is of no use to the society, instead of simply distributing dole or bounty amongst the affected persons. There is no reason why the State should resort to such a camouflage. The presumption Therefore must be that the work undertaken by the State by way of famine relief is useful to the society and productive in terms of creation of some asset or wealth and when the State exacts labour or service from the affected persons for carrying out such work, for example, a bridge or a road, which has utility for the society and which is going to augment the wealth of the State, there can be no justification for the State not to pay the minimum wage to the affected persons. The State cannot be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions. The State cannot under the guise of helping these affected persons exact work of utility and value from them without paying them the minimum wage. Whenever any labour or service is taken by the State from any person, whether he be affected by drought and scarcity conditions or not, the State must pay, at the least, minimum wage to such person on pain of violation of Article 23 and the

Exemption Act in so far as it excludes the applicability of the Minimum Wages Act, 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Article 23. The Exemption Act cannot in the circumstances be relied upon by the respondent as exempting it from the liability to pay minimum wage to the workmen engaged in the construction work of Madanganj Harmara Road.

35. In *People's Union for Democratic Rights v. Union of India* AIR 1982 SC 1472, it was held by the Supreme Court that:

...we are, Therefore, are of the view that where a person provides labour of service to another for remuneration which is less than the minimum wages, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right minimum wages to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article 23 is remedied.

I must, Therefore, hold consistently with this decision that where a person provides labour or service to another for remuneration which is less than the minimum wages, the labour or service provided by him clearly falls within the meaning of the words "forced labour" and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him he can complain of violation of his fundamental right under Article 23 and ask the court to direct payment of the minimum wages to him so that the breach of Article 23 may be abated.

36. 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.

37. I find that in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, it was held by the Supreme Court that the entitlement to minimum wages under the Minimum Wages Act is an "existing right" of the workman which does not require any further adjudication and that the Labour Court would have the jurisdiction to grant such a relief u/s 33(C)(2) of the Industrial Disputes Act.

38. In *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, the court held that requiring a workman to discharge duties at rates which are less than the minimum wages notified under the statutory enactments, amounts to violation of Article 23 of the Constitution of India.

39. 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.

40. The question to what would be an appropriate amount that should be awarded while considering interim relief of grant of wages where an Award in favor of workman has been considered by this Court in a judgment reported at 2002 II AD Delhi 112 entitled Delhi Transport corporation v. the Presiding Officer, Labour Court I. Placing reliance on adjudication in labour matters requiring the court to decide on principles of social welfare it was thus noticed in paras 7, 9 and 10 of the report.

7. Management counsel have belaboured the observations of the Hon'ble Supreme Court in Dena Bank 1 (supra) to the effect that the wages contemplated u/s 17B of the I.D. Act partake of the nature of a subsistence allowance and hence should not exceed the actual wages last drawn by the workman at that point of time when his employment was terminated. In the first place, this observation was made in the context of the payments made pursuant to orders u/s 17B of the I.D. Act being non-recoverable and non-adjustable. Secondly, the Court must endeavor to give a purposeful interpretation to a statutory provision, in conformity with its Objects. The only exception or limitation is where the language used is such that the only meaning extractable does not permit such an interpretation. Thus, if a subsistence allowance was intended to be given in Section 17B of the I.D. Act, it could have been easily stated so. A pedantic approach is always to be deprecated. In C.W.P. No. 2112 of 1999 it has been highlighted by Mr. Sabharwal himself that the work person was a daily-wager and she was earning only Rs. 11/- and that the DDA would submit that it is these wages that should be granted to her. Even if Mr. Sabharwal's arguments were to be accepted, can this sum of Rs. 11/- be considered as a "subsistence allowance". This submission has strengthened my resolve and understanding that u/s 17B of the I.D. Act, the wages should not fall below the time when orders under the Section are to be passed, a moderation may reasonably be effected. It was his contention, however, that while minimum wages could be ordered in place of 'last drawn wages' if these are below the minimum wages, once this is carried out there would be no further justification for ordering the payments u/s 17B of the I.D. Act to keep pace with the increase in the minimum wages, once this is carried out there would be no further justification for ordering the payments u/s 17B of the I.D. Act to keep pace with the increase in the minimum wages. To the contrary, Ms. Sunita Bhardwaj, who appears for the workmen drew attention to the enduring observations of the Hon'ble Supreme Court in Crown Aluminium Works v. Their workmen 1958 (I) LJJ 1 to the effect that there is "one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay to its workmen at least a bare minimum wages. It is quire likely that in under-developed countries, where

unemployment prevails on a very large scale, unorganized labour may be available on starvation wages, but the employment of labour on starvation wages cannot be encouraged or favored in a modern democratic welfare State." Even though these observations were made whilst the Court was concerned with the fixation of a wage structure, they are of ubiquitous application. In *Sanjit Roy Vs. State of Rajasthan*, it has been observed that in so far as *Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act* exempts and excludes the applicability of the Minimum Wages Act in relation to workmen employed in famine relief work and permits payment less than the Minimum Wages, it offends Article 23 of the Constitution and is ultra vires. Similar views have also been expressed in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, . On the strength of all these precedents it appears inevitable and inescapable that wherever wages are in contemplation, they cannot fall below the minimum wages, whether the inquiry is on wage fixation, fair wage or interim relief u/s 17B of the I.D. Act, or whatever.

8. xxxx

9. From a perusal of these definitions it will be clear that whatever be the extent of the "wages" granted u/s 17B of the I.D. Act they would fall within the ambit of the definition of wages contained in these enactments. What then is the application to be placed on the word "full" in the phrase "full wages last drawn". In *Dena Bank I (supra)* the Hon"ble Supreme Court has not favored the view that "full" can be read as indicative of the wages currently payable contemporaneously with the filing of the application u/s 17B of the I.D. Act. The words employed must be given their plain meaning and every word must be taken to have been purposefully and not superfluously used; this is a fundamental principle of statutory interpretation. Since the definition of "wages" appears to be all encompassing, the role ascribable to the word "full" seems to then enjoin that the wages should be for the full period in question. Section 33-C(1) of the I.D. Act already provides for an execution procedure if the Award is not implemented. Full wages last drawn can Therefore only mean all the wages that have fallen due atleast from the date of the Award. This interpretation appeals to me as it is pragmatic. The Apex Court did not set aside the other observation in paragraph 7 of the judgment in *Visveswaraya's case (supra)* that although "in Section 17B of the Act the words "from the date of the award" are not found, having regard to the Objects and Reasons stated for inserting this provision, we can, without any difficulty, come to the conclusion that the date from which the full wages last drawn to be paid should be from the date of the award till disposal of the proceedings.

10. The Apex Court had earlier opined in *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, , that the power to grant back wages was possessed and employed by the High Courts and the Supreme Court even prior to Section 17B of the I.D. Act, which Therefore merely codified the law. The Hon"ble Court had observed that "the conferment of a new jurisdiction

can take effect only prospectively except when a contrary intention appears on the face of the statute. Section 11-A plainly indicates its prospective operation. This is made clear in the proviso to the section when it says "provided that in any proceeding under this Section". This can only mean something relatable to a stage after the Section came into being. That is not the case with Section 17B. Here it is not the conferment of a new jurisdiction but the codification in statutory form of a right available to the workmen to get back wages when certain given conditions are satisfied. There are no words in the Section to compel the Court to hold that it cannot operate retrospectively. Before Section 17B was introduced there was no bar for Courts for awarding wages. Of course the workmen had no right to claim it. This Section recognizes such a right. To construe it in a manner detrimental to workmen would be to defeat its object." This further fortifies the view that the wages to be granted in this Section can be from the date of the Award especially since the "Objects" of the amendment clearly indicate/specify so. In Regional Authority, Dena Bank and Anr. v. Ghanshyam JT 2001 (Supp 1) SC 229, the Hon"ble Supreme Court has considered its previous view in Dena Bank I (supra) and observed that "the import of Section 17B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the Award till the challenge to the Award is finally decided". On first principles, the Apex Court has held that Orders u/s 17B of the I.D. Act should commence with effect from the date of the Award, thus leaving no scope any longer for debate.

41. This judgment of the learned Single Judge was assailed in a writ appeal which was dismissed. The judgment of the Division Bench in the appeal is reported at Delhi Transport Corporation Vs. The Presiding Officer, Labour Court No. 1 and Another, where the court held thus:

6. On the issue of whether the payment u/s 17B of the Act should be from the date of the award, the learned Single Judge's judgment analyzing the legislative intendment is unassailable. The learned Single Judge in our view has rightly come to the following finding after taking into account the law laid down by the Hon"ble Supreme Court in Dena Bank II:

Before Section 17B was introduced there was no bar for Courts for awarding wages. Of course the workmen had no right to claim it, this section recognizes such a right. To construe it in a manner detrimental to workmen would be to defeat its object." This further fortifies the view that the wages to be granted in this Section can be from the date of the Award especially since the "Objects" of the amendment clearly indicate/specify so. In Regional Authority, Dena Bank and Anr. v. Ghanshyam JT 2001 (Suppl.1) SC 229, the Hon"ble Supreme Court has considered its previous view in Dena Bank I (supra) and observed that "the import of Section 17B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the Award till the challenge to the Award is finally decided...". On first principles, the Apex Court has held that Orders, u/s 17B of the I.D. Act should commence with effect from

the date of the Award, thus leaving no scope any longer for debate.

7. In so far as reliance by the appellants on Dena Bank I on the question of minimum wages exceeding last drawn wages is concerned, the issue was crystallized by the Hon"ble Supreme Court as to whether the "full drawn wages" contemplated by Section 17B of the Act meant wages drawn at the time of termination of employment or wages which would have been drawn on the date of the Award. It is only in this context that the Hon"ble Supreme Court observed that the phrase "full wages last drawn" must be given its plain and material meaning.

xxxx In Sanjit Roy Vs. State of Rajasthan, it has been observed that in so far as the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act exempts and excludes the applicability of the Minimum Wages Act in relation to workmen employed in famine relief work and permits payment less than the Minimum Wages, it offends Article 23 of the Constitution and is ultra vires. Similar views have also been expressed in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, . On the strength of all these precedents it appears inevitable and inescapable that wherever wages are in contemplation they cannot fall below the minimum wages, whether the enquiry is on wage fixation, fair wage or interim relief u/s 17B of the I.D. Act, or whatever.

9. The learned Single Judge has in our opinion in his judgment felicitously eschewed the narrow interpretation so as to discourage the propensity of the financially stronger management to thwart the employee who is a weaker section of the society by passage of time and expenditure and energy in prolonged litigation. We, Therefore, affirm the judgment of the learned Single Judge.

10. It was finally urged by the appellants that in any event, even if minimum wages beyond wages last drawn are awarded, such payment must be secured by such terms and conditions which would enable the employer to recover the same from the employee in the event of success in the writ petition. The respondents' counsel Shri Sanjoy Ghose, however, contended that such terms could only be imposed if the payment ordered u/s 17B in accordance with Dena Bank II judgment is more than the minimum wages.

11. Reliance was placed by the counsel for the appellants on paragraph 12 of the Hindustan Carbide Pvt. Ltd. Vs. Government of NCT of Delhi and Others, which following the decision in Dena Bank II held as under:

11. The Apex Court, however, has observed that any amount over and above the sum payable under the said provision being refundable, the court may impose such terms and conditions, as it enable the employer to recover the same keeping in view the interest of justice.

12. In that view of the matter, in modification of the Order passed by the learned Single Judge, we direct that the difference in respect of amount between the minimum wages and the last wages drawn by him, respondent No. 3, shall offer

security to the satisfaction of the Registrar (General) of this Court. The Registrar (General), however, shall permit respondent No. 3 to withdraw the amount of last wages drawn and arrears of last wages as also the current and future amount, deposited in terms of Section 17B of the Act, as also the sum of Rs. 5,000/- which was directed to be deposited towards litigation expenses unconditionally without furnishing any security. The rest of the amount however, we clarify, may be permitted to be withdraw subject to furnishing of the security, but the appellant shall not be entitled to encash the FDRs.

12. It is, Therefore, submitted by the appellants that such a course should be followed in the present case also. In our view the above direction in the judgment has only been made on the facts and circumstances of the case and there is no discussion in the judgment as to the rational for securing payment beyond wages last drawn, even if minimum wages were payable. The Division Bench's direction for securing the amount beyond wages last drawn i.e., minimum wages, was made on the facts of the above case and does not constitute any binding precedent. The above judgment in Hindustan Carbide (supra) does not hold that all payments beyond wages last drawn, whether it be minimum wages or more must be secured. In fact the relevant finding of the Hon"ble Supreme Court in Dena Bank II is as follows:

It will, Therefore, be in the interests of justice to ensure, if the facts of the case so justify, that payment of any amount over and above the amount payable u/s 17B to him, he is ordered to be paid on such terms and conditions as would enable the employer to recover the same.

The position of law laid down in Dena Bank II clearly grants a discretion on the facts of the case and in the interest of justice to make an order for payment on terms and conditions. In our view the facts o the present cases which indicate that only minimum wages have been ordered and the interest of justice and mandate of the Minimum Wages Act which require that minimum wages must be paid, clearly leads to the conclusion that for payment up to minimum wages, no terms and conditions ought to be imposed. Consequently, we are of the opinion that the view taken in the Hindustan Carbide (supra) for securing the payment of minimum wages over and above wages last drawn was made on the facts and circumstances of that case.

13. Therefore, in our view only if the payment ordered u/s 17-b is more than the minimum wages, then the amount so paid beyond the minimum wages may be secured so as to make its recovery possible for the employer as per the law laid down in Dena Bank II decision. However, in light of our discussion, the statutorily mandated minimum wages are bound to be paid by the employer without terms and conditions and Therefore cannot come under the ambit of the provision of security for its repayment.

14. However, since another Division Bench of this Court in Hindustan Carbide's case (supra) has ordered that payment of minimum wages beyond and greater

than the wages last drawn must be secured by imposing terms and conditions and even though we are of the view that there is no binding principle and precedent which emerges from the said judgment which was confined to the facts of that case, nevertheless in order to avoid any possible divergence of views, we direct that only the issue as to whether payment by way of minimum wages directed to be made beyond wages last drawn must be on terms and conditions, ought to be referred to a Full Bench.

15. We further direct that even though we are of the view that payment up to minimum wages does not require any terms and conditions to be imposed, yet to avoid any possible divergence of opinions between our judgment and that of Hindustan Carbide's judgment (*supra*), we think that in the interest of justice since the employees concerned are being granted relief on the basis of Section 17B which postulates unemployment, the amount of minimum wages payable as per the Single Judge's judgment be secured, only to the extent it is beyond the wages last drawn on furnishing of security by way of an undertaking on affidavit, to refund such amount, to be given by the concerned employee. We hold the view that requirement of any other form of security for the difference between wages last drawn and minimum wages are not warranted by the facts of the case and the interest of justice as the recipient is without employment. Indeed furnishing of any other form of security by an unemployed employee for securing payment of minimum wages would make such payment illusory.

42. The principles laid down in these authoritative judicial pronouncements are binding on this Court. There can be no manner of doubt that in consideration of an application seeking grant of interim relief in a writ petition, the court can issue only such directives as are permissible constitutionally and legally. It is settled law that the minimum wages as are notified by the statutory authorities under the Minimum Wages Act, 1972 are a reasonable assessment of the subsistence allowance. Consequently, it has to be held that irrespective of the description under which the order granting minimum wages is passed or the statutory provision under which the application is made. Such order would be equitable, fair and legally correct.

43. In this behalf, the applicability of the Minimum Wages Act, 1948 is not the issue. Reference has been made to the prescription of the wages under this enactment only for the purposes of arriving at a reasonable and fair quantum of wages which could be considered as a standard or a bench mark while granting interim relief to a workman. Using the wages fixed under this enactment as a fair standard does not mean that an employer becomes covered under the statute.

44. So far as the issue as to the date from which the order can be passed, the same has also been the subject matter of consideration in several cases prior hitherto. In this behalf, it has been held by the Apex Court in *Regional Authority, Dena Bank and Anr. v. Ghanshyam* reported at JT 2001 Supp.1 SC 229 and by the Division Bench of this Court in *Indra Perfumery Co. Thr. Sudershab Oberoi v. . Presiding Officer and Ors.* 2004 III AD (Delhi) 337 that the court would be

fully justified in directing payment of the interim wages from the date of passing of the award which has been assailed in the writ petition.

45. In *Regional Authority, Dena Bank and Anr. v. Ghanshyam* reported at JT 2001 (Suppl. 1) SC 229 wherein the court held thus:

12. We have mentioned above that the import of Section 17B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the Award till the challenge to the Award is finally decided which is in accord with the Statement of the Objections and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17B was inserted in the Act. We have also pointed out above that Section 17B does not preclude the High Courts or this Court from granting better benefits - more just and equitable on the facts of a case - than contemplated by that provision to a workman. By interim order the High Court did not grant relief in terms of Section 17B, nay, there is no reference to that Section in the orders of the High Court, Therefore, in this case the question of payment of "full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

46. The court in *Indra Perfumery Co. Thr. Sudershab Oberoi v. . Presiding Officer and Ors.* 2004 III AD (Delhi) 337 held:

7. Thus, with regard to the back wages, under the award, order was made directing the petitioner to deposit the amount and at the same time, stay was granted. Naturally, the benefit u/s 18B may not have been granted at that point of time as there was no affidavit by workman as contemplated u/s 17B of the Act, but after the affidavit is filed, workman is entitled to get the benefit if it is proved to the satisfaction of the Court that workman had not been employed anywhere. Had he been employed and was receiving adequate remuneration during any such period or part thereof, the situation would have been quite different. But, here affidavit is filed and no affidavit-in-reply is filed by the employer. During this period (i.e. after the award when the matter is admitted by the Court), the Court can pass the order. Therefore, we think it proper to take up this application.

8. No doubt, the language of Section 17B of the act particularly, the words "during the period of pendency of proceedings in the High Court" gives an impression that order regarding payment has to be made for the period when proceedings were pending in this Court. However, in the case of *Regional Authority, Dena Bank and Anr. v. Ghanshyam*, reported in JT 2001 (Supp. 1) SC 229, wherein the Apex Court had examined this question in paras 7, 8 and 9. Considering the statement and objects and reasons for inserting the said provision and to mitigate the hardship that would be caused to delay in implementation of the award, the Apex Court pointed out that it was proposed to provide the payment of wages last drawn by the workman concerned from the

date of the award till the disputes between the parties finally decided either in the High Court or the Supreme Court. It may be noted that after the award is made by the competent Forum, it becomes the bounden duty of the employer, either to take back the workman in service as per the directions made by the court or to pay the wages. It is keeping this aspect in mind, Section 17B, came to be inserted. After the award is made, this Court is of the opinion that unless the stay is granted by the Court, it is the duty of the employer to implement the award and the moment he challenges, it becomes his bounden duty to follow the mandate of Section 17B, when there is an affidavit filed by the workman that he was not gainfully employed, as indicated in Section 17B of the act.

9. We may observe that the Apex Court in the case of Dena Bank (supra), was not directly examining the issue namely whether the order u/s 17B can be made from the date of the award or from the date of the filing of the writ petition. However, we note from paras 7,8 and 9 of the judgment that the Court has indicated that such payment is to be made from the date of the award.

10. The Court is examining the legislation, which is a welfare legislation. The Labour Court on arriving at a conclusion that dismissal/termination is illegal, has to direct reinstatement of the workman with full back wages. In the instant case, in view of the order, the workman was entitled to not only the back wages, but was also entitled to get current wages, unless he had refused to work. If the employer, instead of reinstating the workman, challenges the award and obtains stay order, the workman will not get the benefit of the order which ought to flow from the date of the order. It is in view of this, when an order is made by the Labour Court, the benefit must flow from the date of the order passed. Section 17B of the Act protects both the sides during the pendency of the proceedings in the High Court and if the proceedings are not pending, then the workman cannot be denied the benefit of the order made by the Labour Court. It is in view of this, it would be just and proper to say that the workman is entitled to get the benefit of the order from the date of the passing of the order.

47. The grant of wages to a workman during the pendency of a challenge by the management to the industrial award have been statutorily granted u/s 17B of the Act. This pendentelite right has been recognised to remove hardship and to protect the interest of the workman. The principle underlying this right is that the workman cannot be left uncared to suffer a total deprivation of wages merely because the employer has chosen and initiated proceedings under Article 226 and 136 of the Constitution. The courts have taken a view that merely because there is no provision as to what will happen to the amount paid u/s 17B of the ID Act, if the employer ultimately succeeds in the litigation, will not make the section either vague or arbitrary.

48. However, in a pronouncement of the High Court of Judicature at Madras reported in Godrej and Boyce Manufacturing Co. Ltd., Madras Vs. Principal Labour Court, Madras and Another, the court held that any challenge to the award on the ground that it is without jurisdiction or his otherwise a nullity alone will not be

sufficient to suspend the operation of Section 17B of the Act. The final adjudication in a case where the award is without jurisdiction or is otherwise a nullity shall ordinarily meet the ends of justice. A workman who shall be waiting for the implementation of the award during the pendency of the proceedings, shall receive only the wages at the rate last paid for period of pendency of the proceedings in the court. It is not a burden of any serious consequence upon the employer, but it will be a deprivation of a sort which may go to the workman and his family. The power to make a final order includes the power to make an interim order and that power will extend to suspending the liability of the employer u/s 17B of the Act and accordingly, the right of the workman to receive wages pendentelite. But this will be possible only in the rarest of rare cases as, otherwise, it would defeat the very purpose for which the section has been introduced in the Act. The court noticed that there shall be any number of employers/managements, shall successfully contrive petitions and the proceedings challenging the award on some such ground as the award being without jurisdiction or a nullity and that courts cannot afford to be manipulated and allow the employer management to use the interim order as a weapon to avoid such statutory liability. Some error of fact or even some error of law alone will not thus be enough to avoid the liability of the management u/s 17B. If, however, the error is such that goes to the root of the jurisdiction of the tribunal and the court has got sufficient materials to ignore the effect of Section 17B of the Act, only in such a circumstance may the court decline to order payment of wages pendentelite.

49. To the same effect is the pronouncement of a Division Bench of the Jharkhand High Court reported at 2001 (90) FLR 67 Employer, The Management of Central Mine Planning and Design Institute Ltd. v. Union of India and Ors., it was held:

9. We are respectful agreement with the view expressed and the ratio laid down by the Full Bench of Madras High Court in *Godrej and Boyce (supra)*. Similarly in *Dena Bank, (supra)* their Lordships of the Supreme Court asserted once again the fact that basic power still originates from Article 226 of the Constitution. On a consideration of all the relevant aspects of the matter, Therefore, our view is that Section 17-B of the Act does not take away the unfettered power and plenary jurisdiction of the High Court conferred upon it under Article 226 of the Constitution and that Section 17-B of the Act has to be read with Article 226 of the Constitution. We are of the view, Therefore, that whenever a writ petitioner challenges an award passed by a Labour Court or an Industrial Tribunal and raises contentions concerning the very basic jurisdictional aspects of the Award or brings to the notice of the Court some patent error of law apparent on the face of the award and thus satisfies the Court, *prima facie*, with reference to the merits of the aforesaid contentions (duly supported by the material on record) that the Labour Court or the Industrial Tribunal erred in passing the Award (award can thus be termed as a perversity or nullity in the eye of law) merely because Section 17-B is there on the Statute Book, there is no mandatory

requirement that even in such cases where the High Court, prima facie, is satisfied about such illegality in the Award, it must pass an order directing the writ petitioner to pay wages last drawn to the respondent during the pendency of the proceedings in the High Court. We have thus no hesitation in saying that there can be cases where despite Section 17-B being there on the Statute Book the High Court can decline to grant relief paying wages last drawn to a person. At the same time we must hasten to add that cases where the High Court may decline to pass an order u/s 17-B of the Act, have to be the rarest of the rare. Granting relief u/s 17-B of the Act and passing orders directing payment of wages last drawn, is generally the rule; refusing to grant relief u/s 17-B an exception, as it would be in the rarest of the rare cases. The cases may be only those where an award is challenged on the basic issue of jurisdictional error or errors apparent on the face of the Award. One instance of jurisdictional error can be about the absence of the relationship of workman and the employer between the parties. If the writ petitioner challenging the Award before the High Court genuinely, bona fide, seriously and gravely raises the question of absence of this relationship and the High Court is satisfied, prima facie, in full measure with a reference to such contentions of the writ petitioner, which have to be duly supported by the material on record and the High Court comes to a prima facie conclusion that indeed very serious and grave doubts do exist with respect to the question of such relationship between the parties, it can refuse to pass an order u/s 17-B of the Act, thus declining to issue a direction to the writ petitioner to pay wages last drawn to the respondent. Since the satisfaction of the High Court on this score has to be prima facie very clear, it goes without saying that while declining to grant relief u/s 17-B of the Act, we are required to act with utmost circumspection.

50. In *Vysya Bank Ltd. Vs. General Secretary, All India Vysya Bank Employees' Union, Bangalore and Others*, the services of a probationer clerk cum typist had been terminated from service during the period of a probation and the industrial award had not resulted out of any basis in law but only out of sheer compassion. It was in these facts that the court held that Section 17-B does not in any way impair or interfere with the powers of the High Court under Article 226 of the Constitution of India and the Court possesses the discretion to go into the question and award a lesser amount than the exact quantum of last drawn in case where the award is passed without the jurisdiction erroneously. It may be open for the court to deny the benefit completely if the conditions set out in the Section are not satisfied. But once the conditions set out in the Section are satisfied, no rider can be added to restrict the benefit u/s 17-B of the Industrial Disputes Act.

51. I may also notice that often applications are filed by the workmen seeking entitlement to wages under the provisions of Section 17B of the Industrial Disputes Act wherein a prayer is made for award of wages on the basis of the minimum wages notified by the authorities from time to time and also their grant with effect from the date of the passing of the award. I have noticed the

authoritative pronouncements by the Apex Court to the effect that this Court while exercising jurisdiction under Article 226 of the Constitution of India is empowered, to grant as an interim measure, wages on such terms which may be beyond the parameters laid down by the provisions of Section 17B of the Industrial Disputes Act.

52. Applications are made by the workmen either only under the provisions of Section 17B of the Industrial Disputes Act or under this Section read with Section 151 of the Code of Civil Procedure. Other applications are filed only u/s 151 of the Code of Civil Procedure.

53. So far as the effect of the application being captioned as an application u/s 17B of the Industrial Disputes Act, 1947 is concerned, it has been urged on behalf of the petitioner that such applications cannot be treated as applications seeking a relief wider than what is permissible u/s 17B of the Industrial Disputes Act, 1947.

54. In this behalf, it is a settled principle of law that if the court is empowered to grant a substantive relief, it has the inherent power to grant interim relief. The court would be empowered and justified in granting relief if an order to this effect was required to be made on the facts laid before it. In this behalf, it could be useful to advert to several judicial pronouncements on the issue of the power of the court which is dealing with a petition u/s 20 of the Hindu Adoptions & Maintenance Act. It has been held that the court has the power to grant the substantive relief of maintenance to a minor child against his father. Such court would have the jurisdiction to grant interim relief to the child u/s 151 of the Code of Civil Procedure. The question as whether such power is an inherent power or whether it is a power in aid of the relief remains contentious.

55. In 1978 2 Delhi 531 entitled Ravinder Nath Sharma v. Nagesh Sharma alias Rinkoo (Minor) Through Smt. Nirmal Sharma, Mother and Natural Guardian, on the above issue, the court observed and held thus:

4. True the Act does not contain any specific provision conferring power on the Court to grant interim maintenance, but that would not be destructive of the power. If the Court had one, whether inherent or otherwise, in aid of proceedings pending before it, to grant interim relief in certain circumstances. In industrial law, the power of the Tribunal to grant interim relief, in aid of the final relief, which the Tribunal is entitled to give, is very well recognised, if there are grounds which would justify it provided that it is not the whole of the relief (1). While there is no decision in which the principles laid down by the Supreme Court with regard to the grant of interim relief in industrial law were applied to civil proceedings or proceedings under the Act, a review of the cases that arose under the Act itself (2) indicates a preponderance of judicial opinion in favor of the proposition that there was ample jurisdiction in a Court, seized of a claim for maintenance by a wife, aged or infirm parents or a minor child, to grant the interim relief during the pendency of the proceedings, although there has been a

sharp difference of opinion as to whether such a power is in the nature of an inherent power of the Court or a power to act in aid of the relief that it is entitled to give in any cause and, Therefore, ancillary to the substantive provisions of the Act. The question as to the source of the power is, however, wholly academic for the purpose of the present case. Some of the cases which have taken the contrary view holding that there was no power in the absence of a specific provision to grant interim maintenance do not appear to me, with respect, to represent the true legal position (3). I have, Therefore, no hesitation in holding that the Court had ample power to grant interim maintenance.

56. In *Khadal Penthi Vs. Hulash Dei and Another*, the Full Bench of the High Court of Orissa was called upon to consider the question as to whether in the absence of any provision in the Hindu Adoptions and Maintenance Act and the Hindu Marriage Act, the court can exercise jurisdiction u/s 151 CPC to grant the interim relief for awarding maintenance. The court held that the statute recognised the substantive right of a Hindu wife to be maintained by her husband by virtue of Section 18 of the Hindu Adoptions and Maintenance Act, 1956 and that such a right was an enforceable right. It was held that even though there is no express provision in any law or in the CPC for grant of interim maintenance in a suit for maintenance, the court would have the inherent powers to pass such orders as may be necessary to meet the ends of justice.

57. In this behalf, it would useful to advert to a decision of the Supreme Court reported in *Jaipur Mineral Development Syndicate, Jaipur Vs. The Commissioner of Income Tax, New Delhi*, New Delhi, it was observed by the Supreme Court that every court is constituted for the purpose of justice to law and may be deemed to possess as a necessary corollary and as inherent in its very constitution all or such powers as may be necessary to do the right and to undo a wrong in the course of administration of justice. The limitation for exercise of inherent powers as has been pointed out in various decisions is that where there are express provisions in law dealing with a particular topic and they expressly or impliedly exhaust the subject of powers of the court or the jurisdiction that may be exercised in relation to a matter, the inherent power cannot be invoked in order to cut across such powers.

58. Similarly, the court exercising substantive powers under the provisions of the Guardians & Wards Act, 1890, has the powers to make interim orders with regard to custody of the child u/s 151 of the CPC (Re : 1983 Delhi High Court Digest item 138)

59. In 1975 (i) 2nd 811 *Gani Devi v. Amar Nath Aggarwal*, it has been held that the court can grant interim maintenance while the pendency of the issue of pauperism of the petitioner was pending consideration.

60. The power of the court cannot be ousted or restricted merely by the caption on the petitioner's application. It is well settled that the jurisdiction of the court is not limited by the provisions of law under which an application has been made

seeking any particular relief. In 1989 (4) DL 202 Smt. Thakuri Bai v. Laxmi Chand and Ors. it was held by this Court that a wrong caption on the petitioner's application can neither divest the court of its jurisdiction nor can the same be set up as a defense to defeat the prayer made by the applicant.

61. There can be no dispute that the Industrial Disputes Act, 1947 confers wide powers on the industrial adjudicator. This court in exercise of its extraordinary powers under Article 226 of the Constitution certainly has the substantive power to grant such relief as the industrial adjudicator can. In the light of the law laid down in afore noticed pronouncements, it would thus also have the power to grant appropriate interim relief to do justice between the parties. This is also statutorily recognised in the provision of Section 17B of the Industrial Disputes Act, 1947.

62. It has been held by the Apex Court that the powers of the High Court to grant interim wages are not restricted, curtailed or circumscribed by the limits set out in Section 17B of the Act, and that this Court is adequately empowered to grant such subsistence allowance as is thought justified in the facts and circumstances of the case. Such power has to be effectuated and purposefully so as to render meaningful and real justice between the parties.

Therefore, it is well settled that an application may be captioned and filed under an erroneous or wrong provision of law. However its admissibility and maintainability is to be decided not by the provision under which it is filed, but examination of the issue as to whether the court has the jurisdiction to grant the relief sought, undeterred and unrestricted by the provisions under which it is couched or may be filed.

Therefore, the petitioner management cannot possibly contend that there is any legal or statutory prohibition in grant of the relief prayed for in the above terms inasmuch as this Court is possessed of the substantive power to grant the relief irrespective of the statutory provision under which the application may have been brought before the court.

63. The Full Bench of this Court in a judgment reported at 2005 V AD (DELHI) 261 DTC v. Jagdish Chander held that the provisions of Section 17B of the Industrial Disputes Act, 1947 will be applicable in a case where the management in the writ petition has challenged the order of the labour court/industrial tribunal whereby its application u/s 33(2)(b) of the Act seeking approval of the order of dismissal of the workman was dismissed by such court or tribunal, subject to the conditions stated in Section 17B itself.

64. The principles laid down in the various judicial pronouncements noticed above for grant of interim relief to a workman can be culled out thus:

(i) An application u/s 17B can be made only in proceedings wherein an industrial award directing reinstatement of the workman has been assailed.

(ii) This court has no jurisdiction not to direct compliance with the provisions of

Section 17B of the Industrial Disputes Act if all the other conditions precedent for passing an order in terms of the Section 17B of the Act are satisfied [Re : Ch. Saraiah Vs. Executive Engineer, Panchayat Raj Department and Another,

(iii) As the interim relief is being granted in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court can grant better benefits which may be more just and equitable on the facts of the case than the relief contemplated by Section 17B. Therefore, dehors the powers of the court u/s 17B, the court can pass an order directing payment of an amount higher than the last drawn wages to the workman (Re : AIR 1998 511 (SC)

(iv) Such higher amount has to be considered necessary in the interest of justice and the workman must plead and make out a case that such an order is necessary in the facts of the case.

(v) The court can enforce the spirit, intendment and purpose of legislation that the workman who is to get the wages from the date of the award till the challenge to the award is finally decided as per the statement of the objections and reasons of the Industrial Disputes(Amendment) Act, 1982 by which Section 17B was inserted in the act. [Re : JT 2001 (Supp 1) SC 229 Dena Bank v. Ghanshyam (para 12)].

(vi) An application u/s 17B should be disposed of expeditiously and before disposal of the writ petition [Re : Workmen Represented by Hindustan V.O. Corpn. Ltd. Vs. Hindustan Vegetable Oils Corporation Ltd. and Others, entitled Workman v. Hindustan Vegetable Oil Corporation Ltd.]

(vii) Interim relief can be granted with effect from the date of the Award [Re : JT 2001 Supp (1) SC entitled Regional Authority Dena Bank v. Ghanshyam 2004 (III) AD (DELHI) 337 entitled Indra Perfumery Company v. Sudarshab Oberoi v. Presiding Officer.]

(viii) Transient employment and self employment would not be a bar to relief u/s 17B of the Industrial Disputes Act [Re : Taj Services Limited Vs. Industrial Tribunal-I and Others, entitled Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, entitled Rajinder Kumar Kundra v. Delhi Administration 109 (2004) DLT 1 entitled M/s Birdhi Chand Naunag Ram Jain v. P.O., Labour Court No. IV & Others].

(ix) The court while considering an application u/s 17B of the ID Act cannot go into the merits of the case, the court can only consider whether the requirements mentioned in Section 17B have been satisfied or not and, if it is so, then the court has no option but to direct the employer to pass an order in terms of the statute. It would be immaterial as to whether the petitioner had a very good case on merits (Re : Anil Jain Vs. Jagdish Chander,

(x) A reasonable standard for arriving at the conclusion of the quantum of a fair amount towards subsistence allowance payable to a workman would be the minimum wages notified by the statutory authorities under the provisions of the

Minimum Wages Act, 1948 in respect of an employee who may be performing the same or similar functions in scheduled employments.[Re: Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, ; Sanjit Roy Vs. State of Rajasthan, ; decision dated 3rd January, 2003 in writ petition(civil) No. 3654 & 3675/1999 entitled Delhi Council for Child Welfare v. Union of India; DTC v. The P.O., Labour Court No. 1, Delhi and Ors. 2002 II AD (Delhi) 112]

(xi). Interim orders directing payment to a workman can be made even on the application of the management seeking stay of the operation and effect of the industrial Award and order. Such interim orders of stay sought by the employer can be granted unconditionally or made conditional subject to payment or deposits of the entire or portion of the awarded amount together with a direction to the petitioner employer to make payment of the wages at an appropriate rate to the workman. Such an order would be based on considerations of interests of justice when balancing equities.

(xii) For the same reason, I find that there is no prohibition in law to a direction by the court to make an order directing payment of the wages with effect from the date of the Award. On the contrary, it has been so held in several judgments that this would be the proper course. (Re : Regional Authority, Dena Bank and Anr. v. Ghanshyam reported at JT 2001 (Supp. 1) SC 229 and Indra Perfumery Co. Thr. Sudershab Oberoi v. . Presiding Officer and Ors. 2004 III AD (Delhi) 337

(xiii) while passing an interlocutory direction for payment of wages, the court may also secure the interests of the employer by making orders regarding refund or recovery of the amount which is in excess of the last drawn wages in the event of the industrial award being set aside so as to do justice to the employer.

(xiv) A repayment to the employer could be secured by directing a workman to given an undertaking or offer security to the satisfaction of the Registrar (General) of the court or any other authority [Re : Hindustan Carbide Pvt. Ltd. Vs. Government of NCT of Delhi and Others,

(xv) in exercise of powers under Article 226 and Article 136 of the Constitution, if the requisites of Section 17B of the Industrial Disputes Act, 1947 are satisfied, no order can be passed denying the workman the benefit granted under the statutory provisions of Section 17B of the Industrial Disputes Act, 1947. [Re: AIR 1998 511 (SC)

(xvi) gainful employment of the workman; unreasonable and unexplained delay in making the application by the workman after the filing of the petition challenging the award/order; offer by the employer to give employment to the workman would be a relevant factors and consideration for the date from which the wages are to be permitted.

(xvii) It will be in the interest of justice to ensure if the facts of the case so justify, that payment of the amount over and above the amount which could be directed to be paid u/s 17B to a workman, is ordered to be paid only on

satisfaction of terms and conditions as would enable the employer to recover the same. [para 13 of Regional Manager, Dena Bank v. Ghanshyam].

(xviii) The same principles would apply to any interim order in respect of a pendentelite payment in favor of the workman.

65. CM No. 48/2005 in Writ Petition(Civil) No. 2211/1998

In this case the petitioner had filed CM 5539/2001 u/s 17B of the Industrial Disputes Act, 1947 which was granted vide an order passed on 8th November, 2001 in the following terms:

"It is stated in the present application by the respondent/workman that ever since the illegal termination of the services of the respondent/workman on 15.2.1988 the workman is not employed in any establishment till date. The aforesaid statement is made on oath, which could not be controverted by the petitioner/management. Therefore, the requisites for making an order u/s 17(B) of the Act stands satisfied. In that view of the matter and following the ratio of the decision of the Supreme Court in AIR 1998 511 (SC) , it is ordered that the petitioner/management shall pay to the workman full wages last drawn by him, from the date of filing of the writ petition in this Court till his reinstatement. The expression "full wages last drawn" would have the same meaning as was given by the Supreme Court in the decision of Dena Bank v. Kirtikumar T. Patel (supra). The payment shall be made by the petitioner/management to the respondent/workman within six weeks from today.

Application stands disposed of in terms of the aforesaid order. It is also made clear that any observation made herein with regard to merit of the petition shall be considered as tentative for the purpose of deciding the present application only.

66. Now, by way of the present application, the applicant/respondent has contended that by virtue of this order, the workman is being paid a pittance of Rs. 1529/- as monthly wages last drawn which is wholly insufficient for even the bare day to day minimum expenses. Contending that this amount is even below the minimum wages statutorily fixed by the government of NCT of Delhi, the applicant submits that it is opposed to all can one of justice and frustrates the entire purpose of awarding wages as an interim relief. On these submissions, the applicant has sought the following reliefs:

(i) Direct the petitioner/management to pay wages to the respondent/workman at the rate of the present minimum wages fixed by the Government of N.C.T.

(ii) Pass any such other or further order as this Hon"ble Court may deem fit and proper in the circumstances of the present case.

67. The application has been vehemently opposed on behalf of the petitioner who has contended that no order directing payment of any amount higher than the full wages last drawn can be granted to a workman as an interim relief. An

objection has been taken to the effect that the workman has not filed an affidavit that he is not gainfully employed.

68. Mr. S.N. Bhandari, learned senior counsel appearing for the petitioner has submitted that the Division Bench judgment of this Court in Fouress Engineering (India) Pvt. Ltd. Vs. Delhi Administration and Others, was not placed before this Court in DTC v. PO LC (supra) and the other judgments relied upon by the respondent/applicant. He submits that as a judgments directing payment of anything beyond the wages last drawn u/s 17B are contrary to the specific statutory provisions and the law laid down by the Division Bench and as such cannot be permitted to stand.

Further placing reliance on New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, it is submitted by learned senior counsel that the statutory liability cannot be more than what is required under the statute itself.

69. My attention has also been drawn to Section 20(3) of the Industrial Disputes Act, 1947 which provides that proceedings under the Industrial Disputes Act, 1947 are deemed to commence on the date when the reference is made and are deemed to conclude when the Award becomes enforceable u/s 17A. Therefore, according to learned senior counsel, the employer management cannot be directed to make payment with effect from the date of passing of the Award as the same does not become enforceable till the same is published in the official gazette in compliance with Section 17A. For this reason, any order directing payment of wages with effect from the date of the Award is contrary to statutory provision.

70. Mr. S.N. Bhandari, learned senior counsel appearing for the petitioner has further submitted that a workman has a right to make an application seeking enforcement and recovery of an award in his favor u/s 33(C)(1) of the Act while for the period for which there is a challenge to the award directing reinstatement, the workman has a right u/s 17B to seek last drawn wages.

Therefore, the legislature having provided a specific remedy for rights created, the workman has to be diverted to such remedy and cannot seek enforcement of the award by way of an interim application in a writ petition filed by the management challenging the award.

It has been pointed out by learned senior counsel for the petitioner that the Industrial Employment (Standing Orders) Act, 1946 itself provides for payment of subsistence allowance u/s 10A. It is pointed out that this section contains only a reference to wages which the workman was entitled to immediately preceding the date of his suspension. It does not advert "to wages last drawn" as is to be found in Section 17B of the Industrial Disputes Act, 1947.

71. Strong reliance was placed on the Division Bench pronouncement of this Court reported at 43 (1991) 742 FE (1) Pvt. Ltd. v. Delhi Administration and Ors.

72. It has further been urged with all the vehemence at the command of learned

senior counsel that the interim relief to which may be admissible to a workman is in the nature of a subsistence allowance and the statute has provided a limit of such amount by using the expression "last drawn wages". u/s 17B of the Industrial Disputes Act. It is submitted that even in exercise of powers under Article 226 of the Constitution of India, such interim relief cannot be beyond the statutory prohibition.

It is urged, that in any case, an employee who is being paid less than the minimum wages cannot seek minimum wages as an interim relief during the pendency of the management's writ petition. It is contended that the remedy of such an employee is u/s 20 of the Minimum Wages Act, 1948 and not by way of an application u/s 17B of the Industrial Disputes Act, 1947.

Without prejudice to this submission, it was further contended that the statutory provisions of the Minimum Wages Act are not applicable to the petitioner who is not a scheduled employer under this enactment and consequently an application seeking a prayer for award of minimum wages based on notifications under this statute is not per se maintainable.

73. According to learned Counsel for the petitioner, the respondent/workman had sought grant of wages and an order in his favor was passed on 8th November, 2001 which has been duly complied with. Merely because latter judgments have expanded the extent of interim relief to which a workman could be held to be entitled, the respondent/workman is not entitled to bring the present application which is really in the nature of a review petition. In this behalf, the judgment of the High Court of Jammu and Kashmir reported at National Insurance Co. Vs. Mohd. Sultan Asim and Another, is relied upon.

74. Placing reliance on the judgment of the High Court of Calcutta reported at 1998 2 LLN 777 entitled Hindustan Paints Supply Company and State of West Bengal and Ors., it is contended that "last drawn wages" means wages drawn at the time of termination and nothing beyond.

75. On the other hand, Mr. Jayant Mehta, learned Counsel appearing for the workman/applicant has contended that the interim relief which is given to a workman when a challenge to an award in his favor is made, is in the nature of subsistence allowance and that the amount which is so paid must be sufficient to enable a workman to keep body and soul together. Industrial disputes take long periods, extending to over decades even, for adjudication and, on behalf of the applicant. Learned counsel has urged that the wages which were being paid to a workman at the time of his termination are grossly insufficient for a workman to eke out his living. According to Mr. Mehta, a fair index of the reasonable amount which should be so ordered to be paid to the workman pendentelite would be the statutorily fixed minimum wages under the Minimum Wages Act, 1948. It has been submitted that the same gives a fair basis for making an order which would do justice to the parties. In this behalf, reliance has been placed on the pronouncement of the Apex Court reported at The Workmen represented by

Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, Shri Durga Prasad and Another Vs. The Banaras Bank Limited, entitled Crown Aluminium Works Vs. Their Workmen, Kamani Metals and Alloys Ltd. Vs. Their Workmen, and AIR 1983 5 SC 328 Sanjit Roy v. State of Rajasthan.

76. I have given my considered thought to the submissions made before me and the available record. The law applicable to the grant of wages is well settled. It has been authoritatively held in the pronouncements noticed herein that there is no restriction on the High Court which is granting relief as an interim measure during the pendency of a challenge by the management to an award directing reinstatement of the workman. It is also settled law that the minimum wages notified by the statutory authorities from time to time gives a fair index of the wages which should be paid to workman pendentelite.

77. During the course of submissions, it was pointed out by learned senior counsel for the petitioner that the services of the respondent/workman were terminated as back as on 15th February, 1988 on which date he was drawing wages of only Rs. 1529/- It is also not disputed that the litigation has remained pending ever since and that such amount is grossly insufficient to eke out a bare living. It was also fairly admitted that such an amount is below the minimum wages notified by the statutory authorities from time to time.

So far as the submission based on the Industrial Employment (Standing Order) Act, 1946 is concerned, I find that Section 10A of the Industrial Employment (Standing Orders) Act, 1946 itself provides for payment of subsistence allowance at the rate of 50% of the wages immediately preceding the date of such suspension for the first 90 days and thereafter at the rate of 75% on satisfaction of the notified stipulations.

Further, on close reading of the pronouncement of the Division Bench in Fouress Engineering (India) (Pvt.) Ltd. v. Delhi Administration 42 (1991) DLT 742 shows that in this case the Division Bench held thus:

7. This Section, 17-B, relates to the period during which proceedings remain pending before the High Court or the Supreme Court, it does not take into account any period to the preferring of the proceedings in the High Court or the Supreme Court. During the pendency of proceedings, the employer is under obligation to pay full back wages last drawn by the employee.

8. xxx

9. From a perusal of the above passage it may appear that even for back wages Section 17-B makes a provision. However, as already considered above, Section 17-B does not deal with the period prior to the preferring of proceedings before High Court or Supreme Court.

10. xxx

11. In our opinion, the Court could have passed such an order with respect to

back wages or arrears payable by the employer to the employee without taking recourse to Section 17-B. There is no dispute that back wages drawn by respondent No. 3 were @ Rs. 615/- per month.

78. This judgment was placed before the Supreme Court in *Dena Bank v. Kiritkumar T. Patel* (supra) and the court observed thus:

14. The decision of the Delhi High Court in *Fouress Engineers (India) (P) Ltd. v. Delhi Admn.* on which reliance has been placed by Shri Sharma, does not throw much light on the meaning of the expression "Full wages last drawn".

Even though the judgment did not elaborate on the expression back wages, it is noteworthy that the Division Bench noticed that Section 17B did not prohibit the High Court in exercise of its extraordinary jurisdiction under Article 226 to make interim orders without taking recourse to Section 17B of the statute. In my view, this judgment also fortifies the view I have taken in this matter.

There can be no dispute to the proposition of law laid down in this judgment to the effect that the language of Section 17B of the Industrial Disputes Act, 1947 is express and unambiguous and that no expanded meaning can be given to the expression "full wages last drawn".

However, I find that the court was not called upon to consider the issue of the power of the High Court to grant wages *dehors* and in excess of the wages which are permissible u/s 17B of the Industrial Disputes Act, 1947. For this reason, this judgment is of no application to the case of the petitioner in the instant case.

79. So far as the availability of the remedy u/s 20 of the Minimum Wages Act, 1948 is concerned, it is to be noticed that this Court is concerned only with the issue of grant of wages as an interim relief during the pendency of the writ petition and not as a final relief and its consideration is confined to what would be a reasonable and fair amount necessary for subsistence which could be granted as interim relief to a workman while a challenge to an award in his favor remained pending in this Court.

80. I am also of the view that in the instant case, the application of the respondent/workman is based on fact that he is unable to make ends meet on the terms on which the order dated 8th November, 2001 was passed. This application, Therefore, is based on a fact situation upon the experience and circumstances of the petitioner after receipt of the amounts under orders dated 8th November, 2001.

81. Such an application is akin to application seeking orders/award of maintenance in favor of dependant children for needs which are liable to change periodically against a parent.

82. The needs of a workman and the fairness of the wages ordered to be paid even by way of an interim order may also vary, dependant on the order originally passed on a workman's application dependant on the needs of the family, the

variation in the cost index etc. Such eventuality can be tested even thus. Assume a situation where, after the passing of the orders granting wages to the workman, the management is able to procure positive information of gainful employment of the workman. If the contention of learned senior counsel for the petitioner was accepted, then it would be impermissible for the court to vary the existing order. But, this is not so. An order modifying the wages ordered to be paid may be passed even on an application of the employer who is able to lay evidence of gainful employment of the workman or other, relevant considerations justifying cancellation of the order in the workman's favor or variation of the amount directed to be paid. I am, Therefore, unable to agree with learned senior counsel for the petitioner on the submission that the present application deserves to be rejected on the ground that it is in the nature of a review petition or that such review based on a judicial pronouncement is not maintainable.

83. So far as the submissions based on the provisions of Section 17 and other provisions of the Act is concerned, in my view the propositions urged are not at all sustainable. Interim wages have been held to be in the nature of non-refundable subsistence allowance. The same cannot be compared to the provisions which relate to execution of the award by any analogy.

84. I find that in compliance of the orders dated 8th November, 2001, the petitioner is admittedly making payment of wages on the basis of the last drawn wages to the workman. Therein is contained an admission of the unemployment and need of the workman and the entitlement of the workman to an order for pendentelite wages. This application has been made u/s 151 of the CPC and is supported by an affidavit. In view of the implied admission on the part of the management to the effect that the workman is entitled to wages, and the application not being u/s 17B of the Industrial Disputes Act, there was no requirement in law of the affidavit which has been mentioned u/s 17B of the Industrial Disputes Act, 1947.

85. I find that vide the order dated 8th November, 2001, the respondent/workman was granted wages with effect from the date of filing of the writ petition in this Court. The writ petition was filed as back as on 9th May, 1998. CM 5539/2001, the earlier application of the respondent/workman u/s 17B was filed on 14th May, 2001.

The present application has been filed only on 16th December, 2004. In this view of the matter, I see no reason to vary the date from which the petitioner shall be entitled to the interim relief as has been granted vide order dated 8th November, 2001.

86. So far as the prayer for award of wages pendentelite is concerned, I find that the respondent/workman has established that the amount being paid to him is grossly insufficient and deserves to be enhanced. The parties have not placed any fair amount which could have been granted to the respondent/workman other than the reliance on the statutory notifications under the Minimum Wages

Act, 1948. In my view, the wages notified by the authorities from time to time under the Minimum Wages Act, 1948 is a reasonable and fair index of the wages which should be admissible to the respondent/workman during the pendency of the litigation. The same is in consonance with the binding principles laid down by the Apex Court and this Court noticed hereinabove by which this Court is bound.

87. Accordingly, this application is allowed. The order dated 8th November, 2001 is modified to the extent that the respondent/workman shall be paid wages with effect from the date of filing of the writ petition at a rate whichever is higher of the two rates between the last drawn wages and the minimum wages notified by the statutory authorities from time to time. The respondent/workman shall file an undertaking in this Court within one week from today setting out his latest address and undertaking to this Court that in the event of the writ petition being allowed, he shall be liable to reimburse to the petitioner the differential of the amount of the wages last drawn and the minimum wages notified by the authorities from time to time.

Arrears in terms of the orders passed today shall be paid to the respondent/workman at the address disclosed in his undertaking within a period of four weeks. Month by month wages in terms of this order shall be paid to the respondent/workman on or before the 7th of each english calendar month at the same address.

88. CM No. 5169/2004 in Writ Petition(Civil) 52/1997

This application has been filed u/s 17B of the Industrial Disputes Act, 1947 praying for grant of wages which are not less than the minimum wages from the date of the award till the date of reinstatement in terms of the order made on 6th May, 1998. It is contended that the respondent No. 3 workman remained unemployed from the date of his first illegal termination till reinstatement on 6th May, 1998 and from the date of the second termination on 2nd September, 1999. Placing reliance on the pronouncement of the Apex Court in the Dena Bank case (supra), it is prayed that the respondent-workman has a legal right and entitlement to such relief.

89. This application has been vehemently opposed on behalf of the respondents. It has been pointed out that the petitioner had filed CM No. 117/1997 praying for stay of the operation, enforceability and implementation of the impugned award dated 18th July, 1996. This application was considered on 6th May, 1998 whereby the interim order of stay of the industrial award passed in favor of the petitioner was modified to the extent that it would operate only against the payment of back wages. It was directed that the petitioner would forthwith reinstate the workman concerned.

90. It appears that the respondent had earlier also filed an application u/s 17B of the Industrial Disputes Act being CM No. 6337/1997 on the 6th May, 1998. As an order requiring the management to reinstate the workman was passed, this application was dismissed as having been rendered infructuous.

91. The parties admit that pursuant to the orders dated 6th May, 1998, the respondent No. 3 was reinstated. However, it has been contended that on 2nd September, 1999, the services of the respondent No. 3 were again terminated.

92. On the other hand, the petitioner has submitted that the respondent-workman left service without any rhyme or reason and has invoked the machinery under the Industrial Disputes Act, 1947 raising another industrial dispute alleging illegal termination of service. It has been pointed out that an order of reference dated 13th September, 1999 has been passed by the Government of National Capital Territory of Delhi in exercise of its powers u/s 10(1)(c) and Section 12(5) of the Industrial Disputes Act, 1947. On this grievance of the respondent-workman. Both parties state that this industrial dispute is still pending before the Industrial Adjudicator.

93. It is evident that only thereafter, the respondent No. 3 workman has filed an application being CM 9885/2000 dated 17th July, 2000 seeking a direction to the management to make payment of at least 75% of the awarded amount to each workman. Subsequently another application being CM 13481/2003 was filed on 3rd November, 2003 praying for modification of the order dated 6th May, 1998 on its application u/s 17B and for grant of wages at a rate whichever is higher of the two rates between the last drawn wages and the minimum wages till the date of reinstatement.

94. This application, i.e. CM 13481/2003 was withdrawn on 15th March, 2004.

95. It is only then that the present application has been filed on 9th April, 2004 seeking wages from the date of passing of the award i.e. 18th July, 1996 till 6th May, 1998.

96. I find force in the submissions made on behalf of learned senior counsel for the petitioner to the effect that the respondent had earlier filed an application being CM 6337/1997 which was dismissed as having been rendered infructuous on 6th May, 1998. By way of this application, the respondent/workman had sought the same relief as has been sought in the present application CM 5169/2004. The respondent was satisfied with the order passed did not assail the order dated 6th May, 1998 in any further proceedings and the same has become final between the parties. In my view, Therefore having sought an interim relief and an order thereon having been passed, the respondent/workman cannot possibly be contended to seek the same relief as an interim relief in the present application.

97. Matters did not end here. The petitioner again sought the same relief in CM 13481/2003 which was also dismissed as withdrawn on 15th March, 2004.

98. The petitioner was admittedly reinstated in service pursuant to the orders dated 6th May, 1998 and as such cannot claim any interim relief in respect of the period between 6th May, 1998 to 2nd February, 1999.

99. So far as the wages subsequent to 2nd September, 1999 are concerned, it is

noteworthy that the petitioner stood reinstated in service pursuant to this Court's order dated 6th May, 1998. According to the petitioner his services have been illegally terminated on this date. It has also been pointed out by learned Counsel appearing for the respondent/workman that such termination has been challenged before the Industrial Adjudicator and the dispute in respect thereof is pending. Therefore the admitted position is that there is no industrial award in respect of the termination allegedly effected on 2nd February, 1999. The present writ petition is not concerned with the alleged termination of service on 2nd February, 1999 nor any proceedings thereafter. Consequently, the petitioner at this stage cannot be held to be entitled to any relief for the period after 2nd February, 1999.

In this view of the matter, I find no merit in this application which is hereby dismissed.

100. CM No. 10456/2004 in Writ Petition(civil) No. 9491/2000

By way of this application u/s 17B of the Industrial Disputes Act read with Section 153 of the Code of Civil Procedure, the respondent Nos. 3, workman seeks an order to the respondent/management during the pendency of the writ petition and further orders to meet the ends of justice.

101. The respondents have stated in their affidavit that they had joined the services of the petitioner in 1983 and their services were illegally terminated in May, 1990. It has been contended that in the organisation of the petitioner, the pay of any grade II employee wherein the respondent was engaged, ranges from Rs. 19,000/- to Rs. 35,000/- It is further submitted that even a peon of grade IV recruited in the year 1997 was drawing approximately Rs. 10,000/- while the applicant's last drawn wages were to the tune of only Rs. 1,285/- In this view of the matter the applicant has prayed for award of a reasonable amount as monthly wages based on the pronouncement of the Apex Court in the Dena Bank's case.

102. It has been urged on behalf of the workman that he had challenged his termination by raising an industrial dispute which was referred to the Industrial Adjudicator. Vide an industrial award dated 1st July, 2003 in ID No. 90/1991 by the Labour Court, reinstatement of the respondent/workman with consequential benefits and full back wages has been directed. This award has been impugned in the present proceedings. The petitioner has made a deposition on affidavit that during the past 14 years since the date of termination of his services, the workman has not been gainfully employed and that he remains unemployed. He contends that he has existed as a parasite upon his father. The workman had also given a deposition in his affidavit that in the event of this Court awarding wages over and above the last drawn pay, he undertakes to refund the difference between the two to the employer if the decision in the writ petition ultimately goes in favor of the management and against the deponent.

103. This application has been strenuously contested by the petitioner on all the

grounds as have been noticed hereinabove. The objection primarily is that no order can be made in favor of the workman as an interim measure in a writ petition filed by the management which is beyond the strict parameters laid down in Section 17B of the Industrial Disputes Act.

104. I have noticed hereinabove the jurisdiction of the High Court in exercise of its extraordinary powers under Article 226 of the Constitution of India whereby it has the jurisdiction to award or grant interim wages dehors Section 17B of the Industrial Disputes Act. I have also noticed and held that there is no prohibition on this Court in granting wages with effect from the date of the award and that the minimum wages notified by the statutory authorities from time to time is a fair index of the amount which the management should be directed to pay to the workman.

105. In the instant case, the petitioner has alleged illegal termination of his services as back as in May, 1990 and the industrial dispute has remained pending since 1991 culminating in the award dated 1st July, 2003 which has been impugned before this Court. The wages of Rs. 1,285/- which was being paid to the workman in 1990 cannot by any measure be considered to be a fair and reasonable wage. This court would take judicial notice of the rising cost of index and inflation. I have also noticed the authoritative judicial pronouncements of the Apex Court to the effect that the wages notified by the statutory authorities under the Payment of Wages Act, 1948 are a reasonable and fair index of fair wages which deserve to should be granted to a workman.

106. In view of the position in law, as discussed hereinabove, the opposition to the application cannot be sustained on any legally tenable grounds and the same is hereby rejected.

107. The undertaking given by the respondent in his affidavit filed with this application is accepted and he shall remain bound by the same.

108. The petitioner is accordingly directed to make payment of wages to the respondent No. 3 at the rate, whichever is higher, between the last drawn wages and the minimum wages which are notified by the authorities from time to time. The arrears of the wages at this rate shall be paid to the respondent/workman at the address disclosed in his affidavit filed in support of the application within a period of four weeks from today. Month by month wages in terms of the order passed today shall be paid to the workman at the same address on or before the 7th of each english calendar month.

This application is allowed in the above terms.