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**(2008) 02 DEL CK 0179**

**In the Delhi High Court**

**Case No :** C.M. 9821 of 2006 in WP (C) No. 1805 of 2005

Indian Airlines Ltd.

APPELLANT

Vs

Sh. Harkesh

RESPONDENT

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**Date of Decision :** 25-02-2008

**Acts Referred:**

**Citation :** (2008) 02 DEL CK 0179

**Hon'ble Judges :** Anil Kumar, J

**Bench :** Single Bench

**Advocate :** Subhash Mishra, for the Appellant; Javed Ahmed, for the Respondent

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## **Judgement**

Anil Kumar, J.—The respondent/workman has filed this application u/s 17B of the Industrial Disputes Act, 1947 read with Section 151 of the Code of Civil Procedure, 1908 seeking a direction to the petitioner to pay to the respondent/workman full wages for the period of pendency of the proceedings before this Court.

2. The respondent/applicant contended that the impugned award directing his reinstatement with back wages was passed on 30 June, 2004 and that he has not been gainfully employed in any establishment since the date of his illegal termination of his services and till date he is unemployed and he has no other source of livelihood.

3. A reply to the application of the respondent u/s 17B has been filed on behalf of petitioner/non-applicant wherein the petitioner contended that the application of the respondent No. 1 u/s 17B of the Industrial Disputes Act, 1947 is not maintainable as no proof of averments made in this application has been produced/filed before this Court and the relief prayed therein cannot be granted. The petitioner has also denied the factum of unemployment of the respondent. It is contended that it is not possible for the applicant/respondent to be unemployed since the termination of his service. It is also asserted that the provision of Section 17B of the Industrial Disputes Act, 1947 is not applicable to

the respondent/workman.

4. Section 17B of the Industrial Disputes Act, 1947 comes into operation when an Award directing reinstatement of a workman is assailed in further proceedings by the employer. Section 17B of the Industrial Disputes Act is as under:

17-B. Payment of full wages to workman pending proceedings in Higher Courts. - Where in any case a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such court : Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.

5. Thus a workman would be entitled for relief u/s 17B of the Industrial Disputes Act, if there is an award directing reinstatement of the workman and the employer has preferred proceedings against such award at the High Court or Supreme Court and that the workman had not been employed in any establishment during the period of pendency of such proceedings and an affidavit to that effect has been filed by the workman. On satisfaction of the requisites as laid down u/s 17B, the court is bound to grant relief to the workman in terms of the provision as laid down u/s 17B of the Industrial Disputes Act. The applicant/respondent fulfills all these requirements and is entitled for relief u/s 17B of the Industrial Disputes Act, 1947. The learned Counsel for the petitioner is unable to explain as to how the said provision is not applicable to the case of the applicant.

6. This also cannot be disputed that the Court cannot go into the merits of the case/writ petition while deciding an application u/s 17B of the Act as was held in *Anil Jain Vs. Jagdish Chander*, . The preliminary consideration for making available such a relief u/s 17B to a workman is to be found in the benevolent purpose of the enactment, the spirit, intendment and object underlying which is to mitigate and relieve, to a certain extent, the hardship which would be caused to a workman due to delay in the implementation of an award directing reinstatement of his services on account of the challenge made to it by the employer. Section 17B recognizes a workman's right to the bare minimum to keep the body and soul together when a challenge has been made 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. 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. In AIR 1998 511 (SC) the Apex Court was of the view that the object u/s 17B of the Industrial Disputes Act, 1947 is only to relieve to a certain extent, the hardship that is caused to the workman due to the delay in implementation of the Award.

7. Granting relief u/s 17B of the Act and passing orders directing payment of wages last drawn, is generally the rule; refusing to grant relief u/s 17B is an exception, as the relief could be denied only in the rarest of the rare cases of jurisdictional error where there is no relationship of employer and employee between the parties.

8. A single Judge of this Court had culled the principles laid down in various judicial pronouncement for grant of interim relief u/s 17B of the Act in Food Craft Instt. Vs. Rameshwar Sharma and Another, As under:

(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 (Suppl. 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, ].

(vii) Interim relief can be granted with effect from the date of the Award [Re : JT 2001 Suppl (1) SC entitled Regional Authority, Dena Bank v. Ghanshyam 2004 (III) AD (Delhi) 337 entitled Indra Perfumery Co. 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 : 2000 (1) LLJ 1012 entitled Taj Services Limited v. Industrial Tribunal; Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, 109 (2004) DLT 1 entitled Birdhi Chand Naunag Ram Jain v. P.O., Labour Court No. IV and Ors.].

(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 : 2000 (III) AD Delhi 413 entitled Anil Jain v. 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) Nos. 3654 and 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 (Suppl. 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 : para 12 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 pendent lite payment in favor of the workman.

9. In the present case the workman has categorically averred that an award dated 30th June, 2004 directing his reinstatement was passed by the Labour Court which has been challenged by the petitioner and that he has not been gainfully employed in any establishment since the date of termination of his services. Apart from bald denial of this fact nothing has been placed on record by the petitioner to negate the plea of unemployment of the respondent. Also whether the award has been passed in accordance with law and whether the petitioner is entitled for reinstatement is to be adjudicated at the time of final disposal of the writ petition and that these questions cannot be gone into at the stage of deciding the application u/s 17B of the Act. The Court while deciding an application u/s 17B of the Industrial Disputes Act can only consider whether the requirements mentioned therein have been satisfied and if the requisites of Section 17B of the Industrial Disputes Act, 1947 are satisfied, no order can be passed denying the workman the benefit of statutory provisions of Section 17B of the Industrial Disputes Act, 1947.

10. In the facts and circumstances, the applicant fulfills the requisites for availing the benefit u/s 17B of the Act. Consequently, the application of the respondent is allowed. The petitioner is directed to pay the last drawn wages or minimum wages whichever is higher from the date of the award, i.e. 30th June, 2004 Arrears of last drawn wages or minimum wages whichever is higher be paid within eight weeks. The petitioner shall continue to pay last drawn wages or minimum wages whichever is higher to the respondent by the 10th of every

English calendar month. The respondent is also directed to file an undertaking that in case this writ petition is allowed, the respondent shall return/refund the difference of last drawn wages and minimum wages within such time as will be permitted by this Court. The undertaking by the respondent be filed within eight weeks. With these directions, the application is disposed of.

WP(C) No. 1805/2005

List on 23rd October, 2008.