

**(2008) 03 DEL CK 0166**

**In the Delhi High Court**

**Case No :** Writ Petition (Civil) No. 17179 of 2005

Kapur Son (India)

APPELLANT

Vs

N.C.T. and Another

RESPONDENT

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**Date of Decision :** 24-03-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 17B, 25F

**Citation :** (2008) 102 DRJ 573

**Hon'ble Judges :** Sudershan Kumar Misra, J

**Bench :** Single Bench

**Advocate :** Nem, for the Appellant; Prem Mishra and Suryakant Singla and Shanto Mukerjee, for the Respondent

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## **Judgement**

Sudershan Kumar Misra, J.

CM No. 12970/2007

1. This is an application u/s 17-B of the Industrial Disputes Act which has been filed by respondent No. 2/ workman, Sh. Bansu Ram.

2. This application, which is stated to have been filed on 4th April, 2006, came to be filed under the following circumstances:

The workman, Bansu Ram filed a claim before the Labour Court alleging that he has been working with the management ever since 23rd August, 1968, and that his last drawn wages were Rs. 2800/- per month. He stated that his services were terminated on 19th March, 2002 in violation of the Principles of Natural Justice and of the Labour Laws. The Labour Court found that although the management had been duly served in the matter, it had chosen to stay away from the proceedings. Consequently, on 17th January, 2004, the management was directed to be proceeded ex parte. After examining the case of the workman as also the evidence produced by him, the Labour Court concluded that his services were terminated in violation of the provisions of Section 25-F of the

Industrial Disputes Act. This decision came to be given on the unrebutted testimony and evidence of the workman. Consequently, the Labour Court directed that the workman, Bansu Ram be reinstated at his post along with back wages in terms of the last drawn wages @ of Rs. 2800/- per month or the minimum wages fixed for that post by the appropriate Government from time to time, whichever is higher w.e.f. 19th March, 2002 which was the date of termination of his service. It was also directed that the workman will be deemed to be in continuous service and be entitled to all consequential benefits in that respect.

3. This award which was passed on 1st July, 2004 by the Labour Court in ID No. 124/2003 is challenged on the sole ground that the requisite summons had never been served on the petitioner management and consequently the same deserves to be set aside. According to the petitioner, the ex parte award was received by it on 4th April, 2005 and it was on this date that the petitioner came to know of the pendency of the dispute before the Labour Court for the first time. It has also been alleged by the petitioner that in fact the signatures appended to the summons issued by the Labour Court in proof of delivery of the said summons upon the petitioner management which are stated to be appended by one of the partners of the petitioner management, have been forged. The petitioner's application for setting aside the ex parte award on the ground that the signatures of Sh. Ravinder Kapoor, partner of the petitioner management have been forged, also came up to be dismissed by the Labour Court. It is the petitioner's case that in this manner, a fraud has been perpetrated on the petitioner management, and Therefore, the impugned award is in fact a nullity. The respondent/ workman contests this and says, inter alia, that in fact due service was effected on the petitioner management by way of registered post acknowledgment due, as also under postal certificate, and that the same is duly reflected from the records of the Labour Court.

4. Be that as it may, it is settled law that while disposing of an application u/s 17-B of the Industrial Disputes Act, the Court is not required to go into the merits of the matter. In the case of Anil Jain Vs. Jagdish Chander, , this Court observed that while considering an application u/s 17-B of the Industrial Disputes Act, the Court cannot go into the merits of the case in the writ petition. The application has to be considered strictly in terms of Section 17-B irrespective of the merits of the writ petition. Similarly, a Division Bench of this Court in Headstart Advertising & Marketing Pvt. Ltd. v. Govt. of NCT of Delhi in LPA No. 1264/2007 decided on 09.10.2007, has held that while deciding an application u/s 17-B the Court is not required to delve into the merits and demerits of the writ petition. The object and purpose being to alleviate the hardship being faced by the workman, who is unemployed and without work, in spite of an award/ order in his favor. Looking at the above judgments, it is clear that a relief u/s 17-B is really an ameliorative relief by way of compensation. Similarly in the case at hand, the workman has got an award in his favor but is unable to have the fruits of the said award because of the proceedings instituted by the management in this High Court, as

a result of which, the operation of the award passed in favor of the workman came to be stayed on 25th January, 2006 by the Court.

5. In his application, u/s 17-B of the Industrial Disputes Act, the respondent/workman has averred that he has not been employed in any establishment or elsewhere and continues to be unemployed since the date of the award. Along with the application, the workman has also filed an affidavit verifying this fact and stating that the facts narrated in the application u/s 17-B are true to his knowledge and that, "since the date of award 01.07.2004 I have not been employed in any establishment or elsewhere and continue to be unemployed till date." In reply, the petitioner has taken the position that an application u/s 17-B is maintainable only if the applicant is a workman and the respondent is an employer. It is averred that since the applicant is not a workman and nor was he employed with the petitioner, Therefore the question of any such application being entertained by the Court does not arise. The petitioner has also taken the plea that the applicant/ workman has not given his correct address and Therefore the petitioner is not in a position to correctly verify the relevant facts with regard to the employment of the applicant, if any. In support of this allegation, petitioner has also annexed a certificate by a Notary Public to the effect that the workman, Bansu Ram is not living in Delhi. In addition, another ground that is taken is that the applicant has reached the age of 60 years. By this, the petitioner probably means that the applicant has passed the retirement age and Therefore the question of giving him regular wages does not arise.

6. As regards the first objection which is raised with regard to the maintainability of the application u/s 17-B on the ground that relief under that Section is only available to a person who satisfies the definition of workman and is in the employment of the petitioner, I am afraid the same holds no water. There is no such limitation to the availability of relief u/s 17-B to a workman who has an award in his favor. The question as to whether or not the applicant is a workman or whether any relationship of employer, employee exists between the applicant and the petitioner is one that could at best be said to relate to the merits of the case. However, the fact remains that the applicant has an award in his favor and, in my view, he can certainly maintain the instant application so long as the ingredients of Section 17-B are satisfied. In this case, the Labour Court has clearly directed reinstatement of the applicant with the petitioner and the petitioner has preferred the instant proceedings under Article 226 of the Constitution of India against the said award. Looking to the ratio of the decisions of this Court in *Anil Jain v. Jagdish Chander* (supra) and *Headstart Advertising and Marketing Pvt. Ltd.* (supra) also, I find no force in this plea.

7. As regards the non-disclosure of the correct address as alleged by the petitioner is concerned; a perusal of the certificate issued by the Notary Public on 27th May, 2006 in fact confirms the fact that the workman, Bansu Ram had been living at the given address, and that on the date when the Notary Public went there, she met the sons of the applicant who informed her that Bansu Ram was

living at his village. She has also noted the fact that whenever Bansu Ram had to come to Delhi in connection with some case, he stayed at this address and then went back to his native village the same day. Simply because the sons of Bansu Ram did not disclose the name of Bansu Ram's native village would not be sufficient for the petitioner to resist an application u/s 17-B of the Industrial Disputes Act. It does not mean that the workman's employment as required u/s 17-B stands proved by the management. At the same time, the objection about the age of Bansu Ram which is stated to be now more than 60 years is also not substantiated by the petitioner in any way. Whilst the applicant himself has stated his age to be about 55 years in 2006 when the application was filed, the petitioner has not produced any material for the claim that Bansu Ram is more than 60 years old. It is strange that the petitioner who states that he is not in any way connected to the workman and does not even know the workman, can claim definite knowledge with regard to the age of that workman, without putting any cogent proof before the Court to support, even prima facie such an averment. I might add that in the management's response to this application, there is not even a whisper of an averment with regard to the employment of the applicant in any establishment after the instant proceedings were instituted before this Court.

8. In that view of the matter, I have no hesitation in holding that the requirement of Section 17-B are duly satisfied and the applicant has complied with all the necessary ingredients to entitle him to relief under the said Section. In that view of the matter, the petitioner, who has not bothered to enter appearance in these proceedings, is directed to pay to the workman wages equivalent to the last drawn wages or minimum wages, whichever is higher from the date of the award i.e. 1st July, 2004 and to continue to pay wages at the same rate during the pendency of these proceedings on or before 10th of each month. In the light of the ratio in AIR 1998 511 (SC) and a decision of a Division Bench of this Court in Ashok Hotel Vs. Govt. of NCT of Delhi and Others, , the workman is directed to file an undertaking by way of an affidavit that in the event of this Court deciding the writ petition in favor of the petitioner, he shall be liable to refund to the petitioner any amount paid to him in terms of the present order over and above the amount he was drawing at the time of his termination, within four weeks.

9. Counsel appearing for the applicant workman states that his client is willing to render services to the petitioner. In that view of the matter, let the applicant/workman report for work to the petitioner after one week and it will be open to the petitioner to assign work to the applicant without prejudice to its contentions raised in the writ petition pending before this Court.

10. Arrears are to be paid to the workman within three months from today.

11. Application is disposed of.

WP(C) No. 17179/2005

Renotify this matter on 24th November, 2008.

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