

(2006) 11 DEL CK 0206
In the Delhi High Court
Case No : LPA 1936 of 2006

Rajbir Singh

APPELLANT

Vs

MCD

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2006) 11 DEL CK 0206

Hon'ble Judges : Mukul Mudgal, J;J.P. Singh, J

Bench : Division Bench

Advocate : Sanjay Ghose, for the Appellant; Deepak Pathak, Daleep Dhayani and Daleep Dhayani, for the Respondent

Final Decision : Disposed Off

Judgement

Mukul Mudgal, J.—This Letters Patent Appeal arises from the order dated 21.8.2006 passed by the learned Single Judge on an application filed by the appellant u/s 17B of Industrial Disputes Act, 1947, (hereinafter referred to as ? the Act?). The application filed by the appellant averred that he was not employed after the termination of his services and accordingly claimed for emoluments u/s 17B of the Act. The said Section reads as follows:

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.

2. The appellant, in particular, is aggrieved by the observations in paragraph 2 of the impugned order which reads as under:

He merely stated that he was not employed in any establishment, which is not sufficient to grant him relief u/s 17B of the Industrial Disputes Act. The legislative intention behind Section 17B of I.D. Act has been that the workman should get sustenance allowance during the pendency of writ petition filed by the management. In order to adjudicate the right of the workman u/s 17B of the I.D. Act, it is necessary that workman should disclose to the court as to what has been his activity and how he has been maintaining himself and his family, if he had no source of earning. The workman may have started a shop or running a business or having other source of earning, and still may not be employed in any establishment.

3. The learned Single Judge has held that mere statement of non-employment with an affidavit in support is not sufficient to grant relief u/s 17B of the Act. We are unable to sustain the above finding of the learned Single Judge which runs contrary to the expressed mandate of Section 17B of the Act. This Section has been interpreted in the judgment of this Court in *Airport Authority of India v. Puran Chand and Ors.* in LPA No. 190/2006 decided on 8th September, 2006 and we are of the view that the issue involved in this case is fully covered by the above judgment. The learned Single Judge has suo moto embarked on this enquiry when the question of non-employment of the appellant was not even disputed by the respondent by filing an affidavit. This Court has already observed in the above judgment that view taken by the learned Single Judge is contrary to the mandate of Section 17B of the Act. A writ court is expected to confine itself to the pleadings and not embark upon an enquiry on its own. The impugned order is, Therefore, wholly unsustainable and is accordingly set aside.

4. In this view of the matter, the application u/s 17B of the said Act is allowed from the date of the award. Payment u/s 17B is required to be made on or before 2nd January, 2007 and continued to. However, it will be open to the respondent-MCD without prejudice to its pleas ask the appellant to report for work while the writ petition is pending in lieu of payment of Section 17B emoluments by giving 4 weeks notice to the appellant through his counsel.

5. The LPA stands disposed of along with CM No. 13134/2006.