

(2008) 01 BOM CK 0029

In the Bombay High Court

Case No : Letters Patent Appeal No's. 290, 291 and 292 of 2007 in Civil Application No. 2105, 2106 and 2107 of 2006 in Writ Petition No. 8699 of 2005

U.P. State Bridge Corporation Limited

APPELLANT

Vs

Maharashtra General Kamgar Union

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Bombay Shops and Establishments Act, 1948 — Section 2(4)

Citation : (2008) 2 ALLMR 479 : (2008) 2 BomCR 619 : (2008) 110 BOMLR 440 : (2008) 3 LLJ 507 : (2008) 4 MhLj 297

Hon'ble Judges : Swatanter Kumar, C.J.;J.P. Devadhar, J

Bench : Division Bench

Advocate : J.P. Cama, instructed by Shilpa Kapil, for the Appellant; N.M. Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—The legislature with an intention to provide protection to a workman, who by award of the competent forum has been directed to be reinstated, where the employer prefers any proceedings against such an award in the Higher Courts, introduced Section 17B of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act". Of course, this statutory benefit of receiving full wages last drawn by the workman is subject to filing of an affidavit as commanded by the provision. This protection could be denied to the workman by the order of the Court where it is proved to the satisfaction of the Court that the workman had been employed or has been receiving adequate remuneration during the relevant period. This grant or refusal of statutory benefit would primarily depend upon the extent of onus on either party to a case. Admittedly, the provisions of Section 17B of the Act or the Rules framed under the Act do not contemplate or provide any particular format in which an affidavit as required u/s 17B of the Act should be filed by the workman. The question involved in this case is "Does absence of such format of affidavit absolve the workman of any primary

onus in relation to the requirements of the Section and shifts the entire burden upon the management restricting their right only to the proviso to Section 17B of the Act?" Thus, a limited but interesting question of law in relation to ambit and scope of burden of proof and its ramification on the right and obligation of the parties requires consideration of the Court in the present case.

2. The members of the respondent Union were working with the appellant, a Corporation fully owned and controlled by the Government of Uttar Pradesh. According to the workmen, their services were illegally terminated by the management along with other workers on 13th February, 1994, against which the workmen raised an industrial dispute demanding reinstatement with continuity of service and full back wages. In furtherance to the notice of demand, the Appropriate Government referred the dispute to the Labour Court for adjudication being Reference (IDA) No. 1 of 1995. The Labour Court, Thane, made an award on 21st September, 2005, directing reinstatement of all the 98 workmen in service of the appellant with continuity of service and full back wages. The appellant filed a writ petition challenging the correctness of the award dated 21st September, 2005 and vide an order dated 29th March, 2006, the operation of the award was stayed by the Court.

3. Three civil applications were filed by the respondent union in the said writ petition wherein they averred that the members of the respondent union were not gainfully employed in any establishment from the date of the award and, therefore, the workmen were entitled to get wages in terms of Section 17B of the Act. Affidavits were filed by the workmen and it will be useful to reproduce the relevant paragraphs of the said affidavit which read as under:

5. I say that as per the statement made on behalf of the Petitioner at the hearing of the Petition for admission, my last drawn wages at the time of termination of service were Rs. 103/- per day. The Petitioner, is a commercial establishment within the meaning of term u/s 2(4) of the Bombay Shops and Establishments Act under which the weekly off is a paid weekly off. Consequently my monthly wages at the last drawn rate would be Rs. 3090/- per month.

6. As required under 17B of the Industrial Disputes Act, I hereby declare and say that I am not gainfully employed in any establishment since the date of making the Award. I hasten to add that I was not gainfully employed in any establishment since the wrongful termination of service by the Respondent original petitioner.

7. I am entitled to the wages at Rs. 3090/- per month from 23.11.2005 being the date of filing of the Petition (though the award was made as early as 13.5.2005) till the Petition is finally disposed of.

8. I pray that the Petitioner may be directed to pay to me wages at Rs. 3090/- per month with effect from 23.11.2005 till the hearing and final disposal of the writ petition.

4. The application was opposed by the management by filing an affidavit wherein it has been stated that the workmen were seen regularly moving on two wheelers in New Bombay and some of them were employed in the establishments in New Bombay. The management, therefore, prayed that the application of the workmen u/s 17B of the Act be rejected. Vide order dated 14th September, 2007, the learned single Judge accepted the prayer of the workmen and directed that they be paid wages u/s 17B of the Act and the applications were allowed in terms of prayer Clause (a).

The relevant part of the order reads as under:

3. The submission of the learned Counsel for the respondent cannot be accepted. Over a period of time, case law has developed on the question of Section 17B of the Industrial Disputes Act, where the workman is expected to disclose whether he is gainfully employed during the period after the award is stayed by the High Court or the Supreme Court. Each of the workman has stated that he is not gainfully employed. The application cannot be dismissed because the workman does not disclose in his affidavit as to how he subsists.

4. Civil application allowed in terms of prayer Clause (a).

5. The arrears shall be paid within a period of six weeks from today.

6. Civil application disposed of.

5. We may also notice that earlier, vide order dated 29th March, 2006, the learned single Judge of this Court had granted stay of the impugned award subject to furnishing of a total security of Rs. 50 lakhs.

6. The argument on behalf of the management is that the affidavit contemplated u/s 17B of the Act has to be an affidavit of correct and complete facts. It cannot be a mere formality by making a vague averment that the workman was not gainfully employed. In fact, the provisions of Section 17B raise an implied presumption that workman was gainfully employed but for which he could not have survived for the intervening long period and obliges the workman to state complete and full facts in relation to his employment/non-employment and in the event of absence of specific averment to explain as to how would the workman survive for the long intervening period.

7. To buttress the submission in relation to these principles, reliance has been placed upon the case of Haryana Urban Development Authority v. Devi Dayal 2002 (1) CLR 1038. In this case, while considering the question of grant of back wages where the award was in favour of the workman granting him reinstatement with full back wages, the Supreme Court held as under:

We are of the view that having regard to the facts of the case, the award of full back wages covering a period of nearly five years is not warranted. Firstly, it is to be noted that the respondent was in service for a short period with frequent spells of absence. The second and more important aspect is that there is a

reasonable possibility of the respondent being gainfully employed somewhere else. The respondent was working as a helper which, apparently, involves performance of work of manual labourer. In all probability, he would have been working somewhere and earning daily wages, if not regularly, at least for some days in a month. The respondent did neither asserts in the claim statement nor did he give any evidence that he could not earn anything throughout by way of daily wages or otherwise during this long interregnum. Considering all these aspects, it would not be a sound exercise of discretion to saddle the appellant with the liability of full back wages. We are inclined to think that the award of back wages to the extent of 50% would be proper and justified, on the peculiar facts of this case.

8. Reliance is also placed on the case of *Shridhar Sakham Omle v. Yeshwantrao Chavan Academy of Development Administration*, Pune 2006 III CLR 358 where a Bench of this Court observed that ordinarily the workman would have been gainfully employed elsewhere during the relevant period particularly when there was no specific averment in the affidavit by the petitioner that he was not gainfully employed, though the writ petition was filed one and half years from the date of dismissal. Some Courts have also taken the view that mere absence on the part of the employer to establish gainful employment does not by itself entitle the workman to secure back wages. In the case of *Navin J. Surti v. Modi Rubber Ltd. and Anr.* 2004 II CLR 46 where the Labour Court while directing reinstatement allowed back wages to the extent of 50 per cent only. This Court held that merely because employer had failed to prove gainful employment it was not necessary that full back wages should automatically follow. There was no averment that the workman had made any effort to secure alternative job or employment. The Court held as under:

Considering the above decisions therefore it cannot be said that mere absence on the part of the employer to establish the gainful employment of the employee during the period he was out of the employment on account of termination of the service would entitle him to secure as a matter of course the order for the back wages in its entirety pursuant to order for his reinstatement in the service. Apart from the obligation on the part of the employer to establish gainful employment of the employee during such period, it would also be necessary for the employee to disclose the efforts made by him to get some other job or employment during such period as well as about the source of income during the said period and if so to what extent. Mere silence on the part of the employee in that regard cannot in any manner enure to the benefit of the employee to justify the claim for back wages in entirety. It cannot be forgotten that the order for payment of back wages has to be from the point of view of compensating the employee for the loss suffered during the time he was out of the employment and not a reward for having succeeded in establishing the action of termination of the service by the employer to be illegal.

9. As already noticed, it is contended with some emphasis on behalf of the

petitioner that the provisions of Section 17B of the Act only gives a right and does not guarantee order for payment by the court of competent jurisdiction unless the provisions of Section 17B are satisfied substantially. Entitlement to receive wages would not by itself be an executable right under this provision. The court has to record satisfaction that an affidavit in accordance with the provisions of Section 17B has been filed wherein besides disclosing that the workman was not employed during the relevant period, the affidavit should also state as to the efforts put in by the workman to gain employment and how the workman was able to subsist. According to the petitioner, upon declaration of such true and complete facts, the court had to satisfy itself and pass an appropriate order in consonance with these provisions. Despite filing of such affidavit, the Management could prove to the satisfaction of the court that the workman was gainfully employed. Thus, it is argued that the order of the court would not be an automatic consequence of filing of an affidavit u/s 17B by the workman and particularly when such affidavit is incomplete and does not disclose facts ought to be disclosed which are within the personal knowledge of the workman. Heavy reliance is placed by the petitioner upon the following dictum of the Supreme Court in the case of U.P. State Brassware Corporation Ltd. and Anr. v. Udai Narain Pandey 2006 I CLR 39:

22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

10. The object of filing the affidavit is not a mere technical compliance but is for substantive disclosure of true and correct facts which would unequivocally show that the workman was not gainfully employed. The term "gainfully employed" would include self-employment from where income could be generated and even if the same was less than wages payable to the workman, the Management would be entitled to adjustment of such sums. This argument is advanced while placing reliance of the judgment of the Supreme Court in North East Karnataka Road Transport Corporation v. M. Nagangouda 2007 I CLR 939. The Supreme Court in that case took the view that the Industrial Tribunal was not justified in granting full back wages as the workman was self-employed in agricultural activity to maintain himself.

The court held as under:

17. On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment. In our view, "gainful employment" would also include self-employment wherefrom income is generated. Income either from employment in an establishment or from self-employment merely differentiates the sources from

which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment."

12. Section 17B requires that during the pendency of the proceedings before the High Court or the Supreme Court, as the case may be, a liability is created upon the employer to pay the workman the full wages drawn by him inclusive of other allowances, but only if the workman had not been employed in any other establishment during such period and an affidavit by such workman had been filed to that effect in such court. Thus, first is a matter of fact known to the workman which is within his personal knowledge while the latter is the requirement of law. The workman employed in any establishment would not be entitled to the benefit of interim protection during the proceeding before the High Court or the Supreme Court, as the case may be. Thus, the onus is placed upon the workman to comply with the statutory provisions of which the court must be satisfied before it directs the employer to make the payment of the required wages. There is definite onus upon the workman which is clear from the language of the legislature. But the onus is a primary onus which stands discharged the moment the workman complies with the requirement of the provisions, unless the Management or employer claims and discharges onus by definite evidence as required by the proviso to Section 17B. Even, the normal rule is equally applicable to the proceedings before the Industrial or the Labour Court, namely the extent of burden of proof and requirement of proof is to be construed liberally. Undoubtedly, the provisions of Section 17B imply an obligation on the court and give a statutory protection to the workman. The direction of the court would be issued only where an affidavit in terms of Section 17B has been filed. That apparently is the intention of the Legislature. A statute is to be construed "to the intent of them that make it." A Full Bench of Delhi High Court in the case of Delhi Transport Corporation through its Regional Manager (Rural) v. Shri Jagdish Chander 2005 II LLJ 390 while examining the provision of Section 17B of the Act, held as under:

9. In the light of the above enunciated principles we would revert back to the language of Section 17B of the Act. The plain reading of this provision shows the legislative intent to give certain protection to the workman during the pendency of the proceedings before the High Court or the Supreme Court in relation to payment of wages. The provisions further show the liability created by statute upon an employer for payment of such wages. This entitlement is subject to the proviso to the said section. The essential ingredients of this provision appear to be:

- (1) By its award direct reinstatement of any workman.
- (2) The employer prefers any proceedings against such award in the High Court or Supreme Court.

(3) The employer shall be liable to pay such workman during the pendency of such proceedings full wages drawn by the workman. The liability to pay arises if the workman had not been employed in any establishment during such period and an affidavit to that effect is filed in Court and

(4) Even if the above conditions exist but it is shown to the satisfaction of the Court that workman had been employed and receiving adequate remuneration during any such period or part thereof then no backwages would be payable for that period.

10. The emphasis of legislature is on the expression "reinstatement" rather than on an "award". Where the workman is reinstated and the Management prefers any proceedings before the High Court or Supreme Court, the object appears to be that the workman if he was not gainfully employed during the relevant period should not starve and should be able to contest the proceedings before the Court meaningfully and without being deprived of the wages which he was entitled to receive under the terms of the award.

11. Obviously the intention of the legislature was to provide definite protection to the workman against the long litigation and exploitation by the affluent Management. As such these welfare provisions are directly relatable to the prescribed benefit to the workman under various provisions of the statute.

13. Similar view was also expressed by the Supreme Court in the case of Regional Authority, Dena Bank and Anr. v. Ghanshyam JT 2001 (supp) SC 229.

14. The statement of object and reasons leading to the Amendment Act, 46 of 1982 which introduced Section 17B of the Act, persisted that object of Amendment Act was mainly to maintain speedy resolution of industrial dispute by removing procedural delays keeping in mind that delay in implementation of the award causes hardship to the workman concerned, it was proposed that the payment of wages last drawn by the workman concerned under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or the High Courts. This, obviously, mean that the intention of the legislature was to give interim statutory protection during the pendency of the proceedings before the High Court or the Supreme Court and direction for payment of such last drawn wages could be issued only if there was an award made to the workman and that he had not been employed in any establishment during the relevant period. To satisfy this ingredient, the onus is apparently on the workman. Unless he discharges his onus in accordance with the statutory provisions, no directive for payment to an employee would be issued.

15. In the case of Hira Lal v. Presiding Officer and Anr. 2003 II SLR 96, Bench of Punjab High Court held as under:

We are not able to appreciate this contention raised on behalf of the petitioner before us. The basic rule, one who claims must plead and prove is equally applicable to the proceedings before the Labour Court. Primary onus is placed

upon the workman that he must plead minimum facts in his statement of claim averring that he was not gainfully employed from the date of his termination anywhere and was entitled to get full back wages which he was drawing at the time of his termination. Once the workman has pleaded such fact and during his evidence and primary evidence is led by him in support thereof the onus certainly shifts to the management to prove to the contrary. The onus placed upon the management is certainly of a higher standard and it must be by reasonable and prudent evidence to show that workman was gainfully employed somewhere else or was earning during the period of termination till he is reinstated, if ordered.

It may not be very correct to state as a matter of rule that there is no onus upon the workman and grant of full back wages should be an automatic corollary to the grant of relief of reinstatement in each and every case. The scheme of the Act and Legislature intent behind the provisions of Section 17B of the Act clearly shows that the Legislature intended not to provide double advantage to the workman. In other words a workman who is gainfully employed somewhere else cannot claim wages from his employer for the relevant period. Even to obtain the benefit of interim order u/s 17B of the Act, workman is required to file affidavit specifically stating that workman has not gainfully employed in any establishment. Further more, u/s 11 of the Act Labour Court is vested with the powers as that of a Civil Court under the CPC and the proceedings before it are judicial proceedings for all intents and purposes. This would make it necessary that general principle applicable to such proceedings must necessarily relate to principle of pleadings and proof. The workman is under obligation to discharge a primary onus in regard to the claim raised by him before a Labour court. In the case of *The Range Forest Officer Vs. S.T. Hadimani*, , the Hon'ble Apex Court explaining applicability of principle of onus to these proceedings held as under:

In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

Still in another case titled as *State of Gujarat and Others Vs. Pratamsingh Narsinh Parmar*, , the Supreme Court while emphasizing the need for a person claiming the relief to prove by leading positive evidence held under:

If a dispute arises as to whether a particular establishment or part of it wherein

an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". Ordinarily, a department of the Government cannot be held to be an industry and rather it is a part of the sovereign function.

In the above case there were no specific assertion by the workman that department was an industry and relief was declined to the petitioner.

As it appears from the record before us the workman had not even made a specific averment in his demand notice/claim petition that workman not employed gainfully right from 1.1.1992 even till date. No evidence has been brought to our notice which would show that the workman on oath stated before the learned Labour Court that he was at no point of relevant time was gainfully employed in any establishment or otherwise. On the contrary the workman has stated that he has been doing labour job to earn his livelihood from the date of his termination. In that event it was for the workman to say what amount he was getting, was that amount in excess or short of the last wages drawn by the workman. No such evidence was produced by the workman. It is true that there is no legal or other presumption against the workman to raise such a claim but he must substantiate his claim by minimum required pleading and proof to claim a relief. Once the workman discharges such onus then it is for the management to refute such claim by appropriate pleadings and leading cogent and admissible evidence. Extent of proof is the only variable factor between the workman and management. Gainful employment is a matter of fact which either party to the proceedings is obliged to prove. There is no presumption of law attached to such a finding of fact. In the event management denies the fact averred by the claimant certainly workman has a primary onus to discharge the onus would subsequently shift to the management. However, above situation may not arise in a case where the management admits the claim of the workman and does not deny the averments made in the demand notice/statement of claim. The obligation to lead the minimum required evidence cannot be displaced by any presumption. A Division Bench of this Court in the case of *Kiran Pal Singh v. The Presiding Officer, Labour Court, Panipat and Ors.* CWP No. 19795 of 2001 held as under:

The principle of law afore-noticed cannot be disputed. However, it was for the workman to bring on record minimum cogent and relevant evidence in support of his claim of employment. The situation created in the present case is attributable to none-else but the workman himself. In absence of any evidence, no reasonable person could come to a finding other than the one recorded by the Labour Court. In fact, in the afore-noticed cases of *Haryana State Electricity Board* and *M/s. Bharat Heavy Electricals Ltd.* It was observed by the court that in the finding of facts recorded by the Labour Court the High Court should not normally interfere.

It may be quite purposeful to refer to the recent judgment of the Supreme Court

in the case of Haryana Urban Development Authority v. Devi Dayal 002(2) SCC 473. The Hon''ble Apex Court dealt with the situation where under the award of the Labour Court a workman was granted the relief of reinstatement with continuity of service and full back wages. The Management preferred a Special Lave Petition before the Apex Court and the Supreme Court was considering the question only in relations to back wages. The Court held as under:

The second and more important aspect is that there is a reasonable possibility of the respondent being gainfully employed somewhere else. The respondent was working as a Helper which, apparently, involves performance of work of a manual labourer. In all probability, he would have working somewhere and earning daily wages, if not regularly, at least for some days in a month. The respondent neither did assert in the claim statement nor did he give any evidence that he could not earn anything throughout by way of daily wages or otherwise during this long interregnum. Considering all these aspects, it would not be a sound exercise of discretion to saddle the appellant with the liability of full back wages. We are inclined to think that the award of back wages to the extent of 50% would be proper and justified, on the peculiar facts of this case.

15. Similar view was also expressed by that court in State of Haryana v. Haresh Kumar and Anr. wherein the court while relying upon the case of The Range Forest Officer Vs. S.T. Hadimani, , stated that the person claiming the relief is to prove the same by giving cogent evidence.

16. In the light of the judgments that we have noted above, there can be no doubt that the onus for seeking statutory interim protection is upon the workman and where Management claims benefit of the proviso of Section 17B, the onus is upon the Management. The onus on the workman is a very limited one and once an affidavit as contemplated under the provisions of Section 17B is filed and the court is satisfied that the workman was not employed in any establishment during the relevant period, direction for payment of wages u/s 17B would be issued. Such an affidavit filed by the workman has to be true and correct description of facts as per the requirements of law. It is expected that the workman would make a definite and correct averment in the affidavit in regard to his non-employment and would show that he could not be employed despite his efforts. It will be for the workman to state categorically that he was not gainfully employed and was not in self-gainful employment which dependent on the facts and circumstances of the case would be a consideration before the court to pass a directive for payment of wages and determination of such wages even at the interim stage.

17. Reliance placed by the learned Counsel appearing for the respondent in the case of Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others, , is not of much relevance. In that case, the Supreme Court while deciding the question of application of Section 17B prospectively and retrospectively, stated three ingredients contained in the said section and while applying the doctrine of purposive interpretation held that the provisions were

retrospective in their operation. Liberal construction of such social provisions was essence of the judgment. In the present case, we are not called upon to interpret the language of Section 17B of the Act in that sense but are simply concerned with the correctness or otherwise of the order impugned in the present appeals.

18. The other case relied upon by the respondent is Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, on the basis of which it was contended by the respondent that though the workman during the relevant period was helping his father-in-law in coal depot and was living with him as he had no other source of income, he could not be said to be gainfully employed and was entitled to full back wages. This judgment was decided on its own facts and did not lay down any absolute proposition of law. In fact, the court in that case had found that the termination of the workman was unjustified and keeping in view the evidence on record, the court had granted back wages. Firstly, that is not the question before us and in any case, whether during the relevant period the workman was gainfully employed or not, is a question of fact which would have to be determined keeping in view the evidence on record and the court cannot lay down a straight jacket formula which would apply to all cases. In the present case, affidavit had been filed by the workman clearly stating that an award had been made by the Labour Court, Thane on 21st September, 2005 and also as required u/s 17B of the Industrial Disputes Act the workman declared that he was not gainfully employed in any other establishment since the date of the award and even from the date of his termination. Identical affidavits have been filed on behalf of the other workmen. It was expected that these affidavits should have been more elaborate and definite in their content. As already discussed, the intention of the legislature to provide statutory interim protection is dependent upon workman not being employed in any establishment and his filing of an affidavit to that effect. To that extent, provisions of Section 17B would have to receive a liberal construction as the protection to the workman is dependent upon his gainful employment including self-gainful employment. No doubt, no format has been provided under the Act or under the Rules framed thereunder but still this affidavit should be true and correct declaration of the required facts. It will be unfair to restrict the affidavit in its contents. It may not help to further the intent of legislature. If a workman during the relevant period was gainfully employed, he would not be entitled to the benefit of Section 17B. "employed in any establishment during such period" is an expression of wider magnitude and scope. If the workman was not employed or self-employed, then alone, the provisions of Section 17B would operate. To give it a technical or restricted meaning and treat an affidavit as complete disclosure of correct facts by merely saying that he was not employed in any establishment, would not be substantive and sufficient compliance of Section 17B. The affidavit so filed by the workman has also not to be unnecessarily elaborate stating other factors which are not contemplated u/s 17B. In the present case, the affidavit was filed only stating that the workman was not employed with any establishment since the date of making the award and also was not gainfully

employed in any establishment since wrongful termination of service. Filing of such affidavit may not be construed as a sufficient compliance of the statutory requirements but in the present case, Management opted to file a vague reply affidavit giving no particulars. It had made no definite allegation in regard to the workman being employed in any establishment or engaged gainfully even in self-employment. It produced on record not even an iota of evidence to show that the affidavit filed by the workman was factually incorrect and Management was entitled to the benefit of the exception made out by the legislature under proviso to Section 17B of the Act. The learned Single Judge while accepting these affidavits of workman as compliance of Section 17B of the Act also held that the application could not be dismissed because the workman does not disclose in his affidavit as to how he subsists. May be, in view of vague plea taken by the Management, such a finding may not call for interference but it will be difficult to accept the same as a general proposition of law. The affidavit of workman essentially must state that the workman was not employed with any establishment during the relevant period and was not gainfully employed including self-employment during the same period. The purpose of filing of an affidavit is to grant statutory interim protection to the workman and to avoid hardship resulting from nonpayment of wages. The onus is on the workman and he must discharge such onus by filing affidavit in definite terms and disclosing the correct facts. Whenever and wherever the Management places before the court apparent material to show the employment in an establishment or gainful self-employment of the workman during the relevant period then the workman will also be expected to show that his affidavit was correct and the question as to how he subsisted during that period would also become relevant. However, in the present case, vague stand was taken by the Management and the Management having failed to discharge its own onus and opted to take vague stand in terms of proviso to Section 17B, cannot claim any benefit and find fault in the order impugned in the present appeals.

19. For the reasons afore-referred, we dismiss these appeals, however, leaving the parties to bear their own costs.