

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP No. 6016 of 2018 in CWP No. 361 of 2018 a/w CWP No. 1610 of 2018

Date of Decision: 08.01.2019

CWP No. 361 of 2018

M/s Control Print Limited		Petitioner.
	Vs.	
Ajitpal Singh Rana		Respondent.

CWP No. 1610 of 2018

Sh. Ajitpal Singh Rana		Petitioner.
	Vs.	
M/s Control Print Limited		Respondent.

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹

For the petitioner/ Non-applicant:	Mr. Suneet Goel, Advocate, for the petitioner/non-applicant in CWP No. 361 of 2018 and for the respondent in CWP No. 1610 of 2018.
For the respondent/ applicant:	Mr. V.D. Khidtta, Advocate, for the respondent/applicant in CWP No. 361 of 2018 and for the petitioner in CWP No. 1610 of 2018.

Ajay Mohan Goel, Judge (Oral):

CMP No. 6016 of 2018 in CWP No. 361 of 2018

Though this application was listed for orders, however, as certain clarifications were required, accordingly, learned Counsel for the parties were heard again.

¹ Whether the reporters of the local papers may be allowed to see the Judgment?

2 Respondent/applicant has filed this application under Section 17-B of the Industrial Disputes act, *inter alia*, praying that the petitioner-Management be directed to pay full wages last drawn by him, inclusive of any maintenance allowance admissible to him during the pendency of this writ petition. Alongwith the application, he has also filed an affidavit to the effect that he is not gainfully employed anywhere.

3. Learned Labour Court vide award dated 23.01.2018 had granted the following relief in favour of the applicant while answering the Reference so made to it by the appropriate Government:

“As a sequel to my above discussion and findings on issues no. 1 to 4, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages and other reliefs as prayed by him in the claim petition. File, after completion, be consigned to records.”

This award is under challenge in the present writ petition and vide order dated 13.06.2018, execution of the award has been stayed.

4. I have heard learned counsel for the parties at a considerable length and also gone through the record.

5. In terms of the award passed by the Tribunal, the applicant has been ordered to be reinstated in service forthwith with seniority and continuity, though he has not been held entitled for back wages.

6. Section 17-B of the Industrial Disputes Act reads 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.”

This provision has been enacted by the Parliament to provide relief to a workman, who has been ordered to be reinstated by an Award passed by the learned Labour Court, during the pendency of the proceedings in case such an Award is under challenge either before a High Court or the Hon'ble Supreme Court. The obvious purpose is to relieve to a certain extent, the hardship which may be caused to a workman on account of delay in implementation of the judgment. A Co-ordinate Bench of this

Court in a similar application filed under Section 17-B of the Industrial Disputes Act, 1947 in CWP No. 2696 of 2016, titled as *M/s Federal Mogul Bearing India Ltd. Vs. Brij Lal* vide order dated 2nd December, 2016 has held as under:

“8. Indisputably, the aforesaid provisions have been enacted by the 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 the proceedings in which the said award is under challenge before the High Court or 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. (Refer: *Dena Bank vs. Kiritikumar T. Patel* (1999) 2 SCC 106).

9. Following the judgment of Kiritikumar’s (supra), the Hon’ble Supreme Court in the case of *Dena Bank vs. Ghanshyam* (2001) 5 SCC 169 has held that Section 17-B provides that where the employer prefers any proceedings against an award directing the reinstatement of any workman, the employer shall be liable to said workman during the pendency of the proceedings in the High Court or the Supreme court full wages last drawn by him. Thus, it is obvious that by enacting such provision, the 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. The provision has been enacted so as to prevent the employer from entering into a long drawn battle with the employee i.e. without paying a penny so as to exhaust him and thereby succumb to the illegal demand or enter into unconscionable bargaining with the employee.

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15. The precise question with which this Court is confronted came up for consideration before the Hon'ble Division Bench of Delhi High Court in *Municipal Corporation of Delhi and others vs. Santosh Kumari and another*, LPA No. 165 of 2012, decided on 24.08.2012 and after quoting Section 17-B of the Act, it was observed as under:

19. This provision has repeatedly come up for interpretation in its various hues and facets before the High Courts as well as the Supreme Court. It may not be necessary to take note of all those judgments laying down the ratio and the various aspects which have been clarified in those judgments laying down certain specific principles. Since in these appeals, we are concerned with a limited issue, viz., the date from which the benefit under Section 17B of the ID Act is to be made available to the concerned workman, our discussion would revolve around this central issue. However, while considering an application under Section 17B of the ID Act, 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 made to it by the employer. The preliminary consideration for making available such a relief to a workman is to be found in the benevolent purpose of the enactment. It recognizes a workman's right to a bare minimum to keep 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 favour of the workman is set aside by the High Court. In Dena Bank Vs. Kiriti Kumar T. Patel [(1999) 2 SCC 106], the Apex Court was of the view that the object under Section 17B of the ID Act 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.

20. Further, the statute requires satisfaction of the following 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 under Section 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 be employed in any establishment during such period and an affidavit had been filed to such effect.*

21. A Single Bench of this Court in Food Craft Instt. Vs. Remeshwar Sharma and Anr. [(2007) 2 LLJ 350 Del] culled out the following principles, from various judicial

pronouncements touching upon various facets for grant of interim relief under Section 17B of the ID Act, in the following manner: "

(i) An application under Section 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 : (1999) 9 SCC 229 entitled Choudhary Sharai v. Executive Engineer, Panchayati Raj Department & Anr.].

(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 under Section 17B, the Court can pass an order directing payment of an amount higher than the last drawn wages to the workman [Re : (1999) 2 SCC 106 (para 22), Dena Bank v. Kirtikumar T. Patel].

(iv) Such higher amount has to be considered necessary W.P(C) No.11803/2005 Page 6 of 11 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 under Section 17B should be disposed of expeditiously and before disposal of the writ petition [Re : 2000 (9) SCC 534 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 Supplementary (1) SC entitled Regional Authority, Dena Bank v. Ghanshyam; 2004 (3) 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 under Section 17B of the Industrial Disputes Act [Re : 2000 (1) LLJ 1012 entitled Taj Services Limited v. Industrial Tribunal; 1984 (4) SCC 635 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 under Section 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 W.P(C) No.11803/2005 Page 7 of 11(5) 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 Kundra v. Delhi Administration*, (1984) 4 SCC 635; *Sanjit Roy v. State of Rajasthan*, AIR 1983 SC 328; decision dated 3rd January, 2003 in Writ Petition (Civil) Nos. 3654 & 3675/1999 entitled *Delhi Council for Child Welfare v. Union of India*; *DTC v. The P.O., Labour Court No. 1, Delhi & Ors.*, 2002 II AD (Delhi) 112 (para 12, 13)]

(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 & Anr. v. Ghanshyam*, reported at JT 2001 (Suppl. 1) SC 229 and *Indra Perfumery Co. Thr. Sudershab Oberoi v. Presiding Officer & 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 W.P(C) No.11803/2005 Page 8 of 11 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 give an undertaking or offer security to the satisfaction of the Registrar (General) of the Court or any other authority [Re : para 12, 2002 (61) DRJ 521 (DB), Hindustan Carbide Pvt. Ltd. v. Govt. of NCT of Delhi & Ors.(supra)]

(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: 1999 (2) SCC 106, Dena Bank v. Kirtikumar T. Patel (para 23)].

(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 High Court of H.P.

(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 under Section 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 favour of the Workman." [emphasis supplied]

22. In respect of the issue, with which we are concerned, the learned Single Judge in the aforesaid judgment held that there was 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. At the same time, it was also held that 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. Following this judgment, another Single Judge of this Court in the case of Delhi Transport Corporation Vs. Sh. Ramesh Chander [W.P.(C) No.11803/2005, decided on 09.1.2008] granted the wages from the date of application and not from the date of award.

23. Learned counsel for the appellant also referred to the judgment of the Supreme Court in the case of Uttaranchal Forest Development Corpn. and Another Vs. K.B. Singh and Others [(2005) 11 SCC 449] directing entitlement for wages under Section 17B of the ID Act from the respective dates of filing the affidavit in compliance with Section 17B of the Act.

24. However, as pointed out above by Mr. Anuj Aggarwal that this judgment was considered by a Division Bench in *Delhi Transport Corporation Vs. Inderjeet Singh* (decided on 29.7.2008) holding that the aforesaid decision of the Supreme Court was a short order, which did not discuss other Supreme Court decisions. The Division Bench in this case also negated the contention that merely by filing delayed application, the workman should be given wages from the date of affidavit and not from the date of the Award. Following discussion contained in the said judgment was relied upon:

"5. The decisions in *Uttaranchal Forest Development Corporation* as well as *Raptakos Brett & Co. Limited* are short orders that do not discuss either of the above Supreme Court decisions. A reading of the orders would show that they were peculiar to the facts of those cases and did not alter the law as explained in *Dena Bank-I* and *Dena Bank-II*. As regards the date from which the amount under Section 17- B ID Act would become payable, the following passage in the decision in *Dena Bank-II* is a complete answer (SCC p.174):

"12. We have mentioned above that the import of Section 17-B 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 Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17-B was inserted in the Act. We have also

pointed out above that Section 17-B 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 an interim order the High Court did not grant relief in terms of Section 17-B, 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."

6. As regards the delay by the workman in approaching the Court for relief under Section 17-B ID Act, it requires to be recalled that the workman could have filed such an application only after the DTC filed its writ petition. The object of the provision is that the wages should not be denied to the workman when he has been able to state on affidavit that he has remained unemployed and the employer is unable to show anything to the contrary. In the circumstances, the benefit under Section 17B ID Act cannot be denied to the workman on the ground that he filed the application three years after the writ petition was filed by the DTC. The entitlement of the workman to wages under Section 17B hinges on whether in fact he remained unemployed since his termination. That it is a question of fact. In light of the un rebutted claim of the workman to that effect in the

instant case, his application under Section 17B ID Act had to be allowed."

25. We would like to remark at this stage that there are many judgments cited by both the parties in support of their submissions. However, in none of those judgments, issue arises directly for consideration. In some cases, without discussion, the benefit of Section 17B of the ID Act was given from the date of application/filing of the affidavit as required under Section 17B of the ID Act in some other cases, it was given from the date of award, again routinely and without discussing as to whether in a given case, it could be given from the later date and not from the date of award. In this backdrop, we have to give answer to the issue that has arisen.

26. We may record, at the outset, that normally such a benefit of payment under Section 17B of the ID Act is to be from the date of award which is not only the plain language of the provision, but so recorded in the objects and reasons for enacting this Section. Therefore, when the application is filed by the workman with promptitude after the receipt of the notice of the filing of the petition by the Management, he would be entitled to the benefit of Section 17B of the ID Act from the date of the award. Problem arises when such an application is not filed for years together and by filing a belated application, still the claim is made from the date of the award, which is resisted by the management on

the ground that it should be given, if at all, from the date of the application.

27. We are of the considered view that the Single Bench in *Food Craft Instt.* (supra) gave a balanced interpretation to the aforesaid provision taking into consideration the interest of both the workman as well as the employer. It is the most equitable. What follows from a conjoint reading of Para (xii) and (xvi) enumerated therein that normally, the workman would be paid wages with effect from the date of the award. It should be in those cases where application is filed with promptitude and immediately on notice of writ petition staying the operation of the order of reinstatement or proceedings against such an award. It should be within reasonable period. Thereafter, that would mean that such an application should normally be filed with the filing of the counter affidavit or reply to an application for interim relief and in the case of absence of such counter affidavit or reply, within the reasonable period from the date when workman has appeared himself or through counsel in the writ proceedings. This would be so even when the management has delayed in filing the writ petition challenging the award inasmuch as with such a delay, it cannot deprive the workman under Section 17B from the date of award. Thus, the expression "during the pendency of proceedings before the High Court" under Section 17B of the ID Act would not mean from the date of filing the writ petition. However, if

there is a long or abnormal delay in filing application under Section 17B of the ID Act, we are of the opinion that in such an eventuality, it becomes an obligation of the workman to satisfactorily explain the delay. It would become relevant consideration for deciding as to whether the benefit is to be accorded from the date of application or the award. In case, it is unreasonable and unexplained delay, it would be within the discretion of the writ Court to direct payment of wages from the date of the application. There could be several reasons for adopting this course of action. One of us (Rajiv Sahai Endlaw, J.) had taken the justification by providing following reasons:

"12.3.....

A. Section 17B is in the nature of a subsistence allowance. It is intended to provide to the workman whose reinstatement has been directed by the Industrial Adjudicator, at least minimum wages, during the time that the judicial review of the award of the Industrial Adjudicator is pending consideration before this Court. The payment thereunder is a month by month payment and is not a payment of any lump sum amount. Further, the said payment is subject to the workman, on affidavit, stating that he is unemployed and/or has been unable to find employment. The employer has a right to rebut the said averment of the workman and if succeeds in

rebutting the same, the workman under Section 17B would not be entitled to payment.

B. The payment under Section 17B is not an automatic payment which starts running immediately on institution of proceedings to challenge the award. For the workman to be entitled to such payment, he is required to file an affidavit. Thus, payment is dependent upon a positive act of the workman. The High Court is not empowered to make the payment till such affidavit has been filed by the workman.

C. Once payment/order requires a positive act of the workman, entitled to such payment of filing in court such affidavit, the ordinary rule of litigation is (as reiterated in Beg Raj Singh Vs. State of U.P. AIR 2003 SC 833) that the right to relief should be decided by reference to the date on which the party approaches the Court. The Supreme Court in Mukund Lal Bhandari Vs. U.O.I. AIR 1993 SC 2127, in relation to the pension of Freedom Fighters also held that the "benefit should flow only from the date of application and not from any date earlier". Thus but for Section 17B providing for payment during pendency of the writ proceeding (and which has been interpreted as not from date of institution of the writ petition but from the date of the award impugned therein) under general law, an order under Section 17B would have been only from the date of the application under Section 17B.

D. However such benefit given to the workman, of direction/order for payment from a

date anterior to the filing of application should not be tilted against the employer by interpreting it to mean that the workman can apply under Section 17B at his whim and fancy and at any time. The workman cannot be permitted to apply under Section 17B when the writ petition matures for hearing and be held entitled to payment for several years together. To allow so, would be inequitable to the employer.

E. In most cases, it is impossible for the employer to verify whether the workman is employed in another establishment or not. It would be more so difficult if the employer is required to verify the employment, if any, for say the last 10 years, as the petitioner herein would be required to, to rebut the affidavit filed by the workman.

F. If the application under Section 17B is made within a reasonable time, the employer can make arrangements for the payment. However, non-filing of the application by the workman can reasonably entitle the employer to believe that the employee is employed in another establishment and will not make any claim under Section 17B. The employer may arrange its financial affairs accordingly. An employer who has acted on the basis of such a representation of the workman cannot after a long period, 10 years as in the present case, be burdened with the liability under Section 17B from a back date which as a lump sum may represent an enormous amount and

wreck the employer. Moreover it will provide a bounty rather than subsistence.

G. The Supreme Court in Excel Wear Vs. U.O.I. AIR 1979 SC 25 held that principles of socialism and social justice cannot be pushed to such an extreme so as to ignore completely or to a very large extent the interests of the employer."

28. We are quite in agreement with this approach. Applying this principle, we proceed to state the outcome in each of the appeal."

7. In view of above stated legal position and applying the aforesaid ratio laid down by the Coordinate bench, in my considered view, interest of justice would be served in case the non-applicant/petitioner is directed to pay the wages last drawn, as clarified above, to the applicant from the date of filing of the writ petition, i.e., 28th February, 2018. Ordered accordingly. The application is disposed of.

(Ajay Mohan Goel)
Judge

January 08, 2019
(bhupender)