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IN THE HIGH COURT OF DELHI AT NEW DELHI
LPA No.254/2008

Date of order: May 21, 2008

DELHI TRANSPORT CORPORATION ... Appellant
Through: Mr. Parag Tripathi, Addl. Solicitor
General with Mr . Sumit Pushkarna and Mr.
A. Nargolkar, Advocates.

versus

EK LAKH HUSSAIN Respondent

59+

AND
LPA No.257/2008

DELHI TRANSPORT CORPORATION ... Appellant
Through: Mr. Parag Tripathi, Addl. Solicitor
General with Mr . Sumit Pushkarna and Mr.
A. Nargolkar, Advocates.

versus

RAMPAL SINGH Respondent

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. | Whether Reporters of local papers may be | |
| | allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported | Yes |
| | in Digest? | |

JUDGEMENT

C.M Nos. 7517/2008 & 7519(exemption) in LPA No. 254/2008

Exemptions allowed subject to all just exceptions.

The applications stand disposed of.

CM No. 7518/2008 (delay) in LPA No. 254/2008

For the reasons stated in the application, the delay in filing the appeal
is condoned.

The application stands disposed of.

CM No. 7520/2008 (delay) in LPA No. 254/2008

For the reasons stated in the application, the delay in refiling the appeal is condoned.

The application stands disposed of.

C.M Nos. 7532/2008 & 7534(exemption) in LPA No. 257/2008

Exemptions allowed subject to all just exceptions.

The applications stand disposed of.

CM No. 7533/2008 (delay) in LPA No. 257/2008

For the reasons stated in the application, the delay in filing the appeal is condoned.

The application stands disposed of.

CM No. 7535/2008 (delay) in LPA No. 257/2008

For the reasons stated in the application, the delay in refiling the appeal is condoned.

The application stands disposed of.

LPA No.254/2008, CM No. 7516/2008 (stay) & LPA No. 257/2008, CM No. 7531/08 (stay)

1. LPA No. 254/2008 is directed against an order dated 17th August 2007 passed by the learned Single Judge allowing CM No. 13469 of 2005 in Writ Petition (C) No. 5812 of 2003 and directing payment to the Respondent workman under Section 17-B of the Industrial Disputes Act, 1947 ('ID Act') the last drawn wages or minimum wages, whichever is higher, from the date of the order of the Tribunal.

2. LPA No. 257/2008 is directed against an order dated 29th

October 2007 passed by the learned Single Judge allowing the application in Writ Petition (C) No. 2314 of 2003 and directing payment to the Respondent workman under Section 17-B ID Act of the last drawn wages or minimum wages whichever is higher from 18th July 2001, the date on which the Industrial Tribunal ('Tribunal') refused to permission to the Appellant, Delhi Transport Corporation ('DTC') to terminate the services of the Respondent workman.

3. Since the Appellant has urged the contentions common to both the cases, the appeals are being disposed of this common judgment.

4. The Respondent in LPA No. 254 of 2008 Ek Ilakh Hussain was working as a Conductor with the DTC. Pursuant to a surprise check, he was charged with non-issuance of tickets to passengers. A departmental enquiry was initiated against him resulting in a report dated 25th July 1992 which found him guilty. Thereafter by an order dated 14th August 1992 he was removed from service. An application was thereafter filed by the DTC before the Tribunal seeking approval of the termination of services. This application was dismissed by the Tribunal by an order dated 7th September 2001. The said order dated 7th September 2001 was challenged by the DTC in this Court in Writ Petition (C) No. 5812 of 2003. The said petition is stated to be pending. During the pendency of the writ petition the Respondent filed an application CM No. 13469 of 2005 under Section 17 B ID Act stating that at the time of termination of his services, the Respondent was drawing Rs.2242/- per month and that he remained unemployed since that date. In the reply filed by the DTC it was not indicated

whether the Respondent was in fact employed during this period.

5. The respondent in LPA No. 257 of 2008, Rampal Singh, was working as a conductor with the DTC. Disciplinary proceedings were initiated against him on the allegation that he had issued tickets of a lesser denomination to five passengers after having collected the full fare from them. Consequent upon the report of the Enquiry Officer, the DTC by an order dated 16th March 1990 removed him from service. The application filed by the DTC before the Tribunal seeking approval of the termination was dismissed by an order dated 18th July 2001. The said order was challenged by the DTC in this Court in Writ Petition (C) No. 2314 of 2003 which is stated to be pending. The Respondent filed an application under Section 17-B ID Act on 17th April 2007 enclosing an affidavit in which he stated that since the date of his termination he remained unemployed. In its reply the DTC did not indicate that he had been employed during this period.

6. In both the cases, by the impugned orders the learned Single Judge allowed the Section 17-B application, following the judgments of the Supreme Court on the point. In each case it was directed that the Respondent should be paid minimum wages or the last drawn wages whichever is higher from the date of the Tribunal.

7. Appearing on behalf of the Appellant Mr. Parag Tripathi, learned Additional Solicitor General, submitted that the learned Single Judge erred in directing the payment of minimum wages or the last drawn wages whichever was higher from the date of the Tribunal's

order. According to him the payment was due only from the date of filing of the writ petition and not any earlier date. He relied upon the judgment of the Division Bench of this Court in ***Fouress Engineering (I) Pvt. Limited v. Delhi Administration 1992 1 L.L.J. 710***. He further submitted that the subsequent judgment of a Division Bench of this Court in ***Indra Perfumery Co. through Sudershab Oberoi v. Presiding Officer 109 (2004) DLT 927 (DB)*** which held that the wages under Section 17-B ID Act would be payable from the date of the award, did not notice the judgment in ***Fouress Engineering (I) Pvt. Limited***. He therefore submitted that these petitions should be referred to a larger bench. According to him, even the observations in the subsequent decision of another Division Bench in ***Ashok Hotel v. Govt. of NCT of Delhi 123 (2005) DLT 384 (DB)*** to the effect that the Supreme Court had in ***Dena Bank (II) v. Ghanshyam JT 2001 (Supp.1) SC 229*** held that the wages would be payable from the date of the award, was not on an incorrect reading of that judgment.

8. At the outset, it requires to be mentioned that although Mr. Tripathi initially urged that the question whether the workman was entitled to the minimum wages or the last drawn wages whichever is higher required to be examined by this Court, he later conceded that in view of the judgment of the Full Bench of this Court in ***Delhi Development Authority v. Smt. Omvati (decision dated 24th May 2006 in LPA No. 84 of 2002)***, this issue was no longer *res integra*.

9. As regards the last submission, it may be noted that the Full Bench of this Court in ***DDA v. Smt. Omvati*** was called upon to examine if

the workman who was awarded the wages last drawn in terms of Section 17-B ID Act, should furnish security during the pendency of the petition to meet the eventuality of the employer succeeding in the writ petition. After referring to the judgments in ***Dena Bank (I) v. Kirti Kumar T.Patel (1999) 2 SCC 106*** and ***Dena Bank-II***, the Full Bench answered the question as under:

“24. We accordingly answer the reference by holding that while awarding a monthly sum more than the last drawn wages to be paid to a workman during the pendency of the writ proceedings challenging an award it is not mandatory to direct the workman to offer a tangible security for restitution to the management in case the award is set aside. It would be open to the Court to pass appropriate orders depending upon the facts of each case as to in what form restitution has to be secured. If workman has no tangible security to offer a personal bond would do.”

10. There is no longer any dispute that in view of the decisions in ***Dena Bank-I*** and ***Dena Bank-II*** a worker can under Section 17-B ID Act be awarded an amount higher than the last drawn wages. In ***Delhi Transport Corporation v. Presiding Officer, Labour Court 2003 VI AD (Del) 2005***, after referring to the judgments in ***Dena Bank (I)*** and ***Dena Bank (II)***, this Court held that the wages in terms of Section 17-B ID Act would be payable from the date of the award. This is reiterated in ***Ashok Hotel*** as well.

11. This Court is unable to agree with the submissions of Mr. Tripathi that the Division Bench in ***Ashok Hotel*** did not correctly interpret the observations of the Supreme Court in ***Dena Bank-I***. In

para 12 of the decision in *Dena Bank (II)* the Supreme Court held as under (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.” (emphasis supplied)

12. The above passage in *Dena Bank (II)* makes it clear that the last drawn wages or the minimum wages whichever is higher is required to be paid from the date of the award. A Division Bench of this Court in *Raj Gariha Vishram Sadan v. Vijay Kate (2007) 2 LLJ 555 (Del)* reiterated that the amount payable in terms of Section 17-B ID Act is payable from the date of the award. Accordingly, as far as the present cases are concerned, the learned Single Judge was right in directing payment of the last drawn wages or minimum wages whichever is higher, to each of the respondents from the date of the Tribunal’s order.

13. Finally it was submitted that in terms of the decision of the Full Bench of this Court in *Smt. Omwati*, each of the workman should be asked to either furnish security or file an undertaking for restituting DTC in the event of DTC succeeding in the writ petitions. As far as this plea is concerned, the Full Bench in *Smt. Omwati* held that “it is not mandatory to direct the workman to offer a tangible security for restitution to the management in case the award is set aside.” It is further observed that “if the workman has no tangible security to offer a personal bond would do.” Therefore, it would be open to the DTC to approach the learned Single Judge for a direction to the workman to file an affidavit of undertaking in the writ petition pursuant to the impugned order passed by the learned Single Judge in terms of the judgment dated 24th May 2006 passed by the Full Bench of this Court in *Smt. Omwati*.

14. Accordingly, there is no merit in either of the appeals and they are dismissed as such. The pending applications also stand dismissed.

CHIEF JUSTICE

S. MURALIDHAR, J

MAY 21, 2008

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