

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C.) No. 3637/2008

% Date of Decision: 03rd NOVEMBER, 2009

STATE OF WEST BENGAL

.....PETITIONER

Through: Mr. Avijit Bhattacharjee, Advocate.

VERSUS

\$ GOVERNMENT OF NCT OF DELHI & OTHERS

.....RESPONDENTS

Through: Mr. Bankey Bihari, Advocate for respondents
No. 5 to 9.
Mr. P.K. Dey for respondent no.11.
Mr. Sanjay Kumar for respondent no.12.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

This is an application under Section 17-B filed by the workmen (respondent nos. 5 to 9) for directions to the State of West Bengal to pay them wages under Section 17-B which should not be less than the minimum wages as notified by the Government of NCT of Delhi from the date of the award, i.e., 27.09.2006 till the decision of the present writ petition.

2. During the course of the arguments on this application of the workmen, Mr. Avijit Bhattacharjee, counsel appearing on behalf of the petitioner (State of West Bengal) contended that the award impugned in the present writ petition is an ex parte award and it does not record any finding that the respondent nos. 5 to 9 were its employees. It is

contended by Mr. Bhattacharjee that respondent nos. 5 to 9 were the employees of the contractors and were never engaged by the petitioner in its employment.

3. I have repeatedly asked Mr. Bankey Bihari, counsel appearing on behalf of the workmen (respondent nos. 5 to 9) to show me the findings in the impugned award whereby the Court below might have come to a conclusion that the respondent nos. 5 to 9 were the employees of the petitioner but on being repeatedly asked, the counsel could not point out the finding in this regard being recorded by the Court below in the impugned award. In fact, the counsel for the workmen admitted that there is no specific finding of employer-employee relationship between the petitioner and the workmen. Being confronted with this factual position, this Court is of the opinion that directions for payment of wages under Section 17-B cannot be given to the petitioner management when it has disputed the relationship of employer and employee and there is no finding in the impugned award that respondent nos. 5 to 9 were its employees. This Court, at this stage, is of the opinion that the main writ petition itself can be finally disposed of.

4. The workmen (respondent nos. 5 to 9) had filed the statement of claim before the Labour Court against three managements, i.e., two contractors and one principal employer, being the petitioner herein. The award assailed by the petitioner in the present writ petition is an ex parte award. Both the contractors against whom the impugned award was passed had challenged the said award by filing two separate writ petitions, being WP(C) Nos. 5228/2007 and WP(C) Nos. 7113/2007 which were both disposed of by two separate orders both dated 05.11.2007 passed by this Court (orders at pages 119 and 122 of the Paper Book). At the time of hearing of these writ petitions filed by the contractors, the

counsel appearing on behalf of the workmen on instructions had stated that it will not proceed or take any action pursuant to the impugned award against the contractors. A perusal of the orders dated 05.11.2007 passed by this Court in these writ petitions would reveal that these writ petitions were disposed of in view of the statement made by counsel for the workmen that the workmen will not proceed against the contractors.

5. Any observations in the said order dated 05.11.2007 contained against the petitioner will not bind it for the reason that the contention of the petitioner in those writ petitions were not examined on merits of the case.

6. The petitioner in the present writ petition has assailed the impugned ex parte award dated 27.07.2006 inter alia on the ground that the respondent nos. 5 to 9 were not its employees and, therefore, it is not liable either to reinstate them or to pay them back wages as ordered in the said award.

7. I have carefully gone through the impugned award and on going through the same, I do not find any finding to prove the relationship of employer and employee between the petitioner on the one hand and respondent nos. 5 to 9 on the other hand. As to whether the respondent nos. 5 to 9 were the employees of the petitioner or not is a question of fact and has to be decided by the Court below on the basis of evidence to be adduced by the parties on this aspect of the matter. Till the time a finding regarding relationship of employer and employee is arrived at, directions for payment of wages under Section 17-B cannot be given.

8. In view of the foregoing, the application of the workmen under Section 17-B is dismissed. This writ petition is allowed. The case is remanded back to the concerned Labour Court/Successor Court for fresh adjudication of disputes between the parties in accordance with law after

giving an opportunity of hearing to both of them.

9. The workmen are given liberty to implead the contractors as well as the petitioner in the statement of claim, if they so wish, because the concerned Labour Court has to ascertain whether the respondent nos. 5 to 9 were the employees of the contractors or of the principal employer, i.e., the petitioner herein.

10. The parties are directed to appear before the concerned Labour Court/Successor Court for directions at 2 PM on 18.11.2009. The Court below is directed to expedite the hearing and decide the case afresh as expeditiously as possible preferably within eight months to be reckoned from 18.11.2009.

This writ petition stands disposed of accordingly in terms referred above. A copy of this order be sent to the concerned Labour Court/Successor Court for information and necessary compliance.

NOVEMBER 03, 2009
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S.N.AGGARWAL, J