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

+ LPA 137/2012

BISWAMBAR NAYAK

..... Appellant

Through: In person.

Versus

BATRA HOSPITAL AND MEDICAL RESEARCH CENTRE

..... Respondent

Through: Mr. Vineet malhotra, Advocate with
Mr. R.M. Tatia, Amit Bhardwaj,
Advocates.

AND

+ LPA 218/2012 & CM 5118/2012 (stay), 7319/2012 (direction)

**BATRA HOSPITAL & MEDICAL RESEARCH CENTRE OF CH
ASHI RAM BATRA PUBLIC CHARITABLE TRUST**

..... Appellant

Through: Mr. Vineet malhotra, Advocate with
Mr. R.M. Tatia, Amit Bhardwaj,
Advocates.

Versus

BISWAMBAR NAYAK

..... Respondent

Through: In person.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER**27.04.2012**

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1. These two cross appeals are preferred impugning the order dated 1.2.2012 passed by the learned Single Judge in W.P.(C) 3562/2011 which was filed by the Batra Hospital of Medical Research Centre (hereinafter referred to as the Management) questioning the order dated 6.4.2011 passed by the learned Labour Court in favour of the workman namely Bishwamber Nayak.

2. The workman was employed with the Management. His services were terminated and challenging the termination, he approached the appropriate government which referred the matter to the Labour Court for adjudication. In the reply filed by the Management, it is inter alia pleaded that Bishwamber Nayak is not a "workman" within the meaning of Section 2(s) of the ID Act, 1947 and therefore the Labour Court has no jurisdiction to decide the industrial dispute.

3. While the proceedings were still pending, the workman moved a petition under Section 10(4A) of the Industrial Disputes Act and the learned Labour Court allowed the said application directing the Management to pay him 75% of the last drawn salary of Rs.10854 during the pendency of

the claim petition, from the date of termination of his service. Challenging this order the Management had preferred the aforesaid writ petition. The learned Single Judge has maintained the order of interim relief but at the same time reduced the amount to 50% of the last drawn salary. The workman is aggrieved by this reduction and that is the reason for challenging the order.

4. Insofar as Management is concerned, it feels prejudiced as according to the Management the order of interim relief is bad as there was substantial evidence produced before the learned Labour Court to the effect that Biswambar Nayak was not a 'workman'. The position taken by the Management is that Biswambar Nayak was working as an officer and discharging the managerial /administrative duties such as granting increments to other staff, granting extension, issuing termination and even appointment letters. The workman, on the other hand, had submitted certain documents allegedly executed by the Management itself as per which he was performing only clerical duties. The learned Labour Court while passing the impugned order took a prima facie view that there is a possibility that he was a workman and on that basis proceeded to discuss the merits of the case.

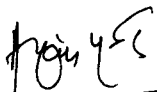
5. At this stage the Labour Court was required to take only a prima facie view and after going through the order of the learned Labour Court as well as the learned Single Judge, we do not find any infirmity in the approach of the learned Labour Court. We may also record that the Labour Court has tried to balance the equities by observing that it would ~~take~~ make effective steps for concluding the proceedings expeditiously for the disposal of the case at the earliest and within a period of one year. It is also observed that this order can be revised if the workman does not cooperate in the early disposal of the case or takes adjournment without sufficient cause or gets a gainful employment elsewhere.

6. We are informed that the workman has already completed the evidence and the Management has also filed the evidence by way of Affidavits and the case is at the stage of cross examination of the Management witnesses. The case is now coming for hearing on 4th July, 2012. Since the Labour Court itself had fixed the limit of one year for itself and one year has already passed, we are confident that the Labour Court would decide the matter by listing the matter at short intervals so that the decision is rendered in the month of July/August. For this purpose, we direct that no adjournment shall be taken on the next date of hearing by any

of the parties which would mean that witnesses shall be produced before the Labour Court and same would be cross examined by the workman. Attempt shall be made by the Labour Court to see that the evidence is concluded on that day. The Labour Court shall fix the case for arguments within few days thereafter and hear the arguments. In this manner, when the case would be concluded within a couple of months, we see no reason to interfere with the orders passed.

7. Insofar as appeal of the workman is concerned, it would be sufficient to say that the Labour Court did not give any reason as to why it was giving interim relief to the extent of payment of 75% of the last drawn salary. The learned Single Judge has reduced the same to 50% of the wages and having regard to the circumstances of the case, we feel that this order of the learned Single Judge need not be interfered with more particularly when the matter before the Labour Court itself would be concluded within few months.

8. We accordingly dismiss both these appeals.


ACTING CHIEF JUSTICE


(RAJIV SAHAI ENDLAW)
JUDGE

APRIL 27, 2012/skb
LPA 137/2012

Page 5 of 5


- Rev pet - 336/12 - review of order dt. 27-4-12.

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

34.

+ LPA 137/2012

BISWAMBAR NAYAK

..... Appellant

Through: In-person

versus

BATRA HOSPITAL AND MEDICAL
RESEARCH CENTRE

..... Respondent

Through: Mr. Umesh Sharma, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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22.05.2012

RP 336/2012

1. The Labour Court had passed orders granting interim relief to the workman by granting 75% of the last drawn salary during the pendency of the proceedings before the Labour Court. The learned Single Judge, while maintaining the order, reduced the interim relief to the extent of 50% of the wages stating that no reasons were given by the Labour Court to grant relief to the extent of payment of 75% of the last drawn salary. Both the management and the workman filed appeal thereagainst and by our order dated 27.04.2012, both the appeals were dismissed thereby maintaining the order of the learned Single Judge. The workman has filed this review petition. During the course of arguments, the workman admits that the Labour Court had not given any reasons while granting 75% of the wages as interim relief, but his submission is that even the learned Single Judge had not given any reasons while reducing the same to 50%. Let it be recorded that the Labour Court has the power to grant the interim relief and when the prima facie case is made out by the workman for

such a relief, orders are passed. The Labour Court itself referred to certain judgments in this behalf pointing out that such a right is in the nature of receiving subsistence allowance. When that is the aspect to be kept into account, normally in case of a suspended employee, the subsistence allowance are 50%. It is for this reason we maintain the order of the learned Single Judge granting interim relief to the extent of 50% of wages. In case the proceedings linger on before the Labour Court and fault thereof is attributed to the management, it would always be open to the workman to seek enhancement of interim relief.

2. With these observations, review petition is disposed of.

Arjun
ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MAY 22, 2012
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fiscal
- C.M.O. - 15577/12 - enhance the subsistence allowance amount from 50% to 100%.