

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 06.12.2012

LPA No.1056/2011

INDIA TOURISM DEVELOPMENT CORPORATION LTD.

..... Appellant

versus

VINOD & ORS.

..... Respondents

LPA No.135/2012

IGI AIRPORT RESTAURANT

..... Appellant

versus

SUBRAMANIAM & ORS.

..... Respondents

LPA No.203/2012

IGI AIRPORT RESTAURANT

..... Appellant

versus

SILVA RAJ & ANR.

..... Respondents

and

LPA No.217/2012

THE MANAGEMENT OF ASHOK HOTEL (ITDC) Appellant

versus

PERUMAL & ANR. Respondents

Advocates who appeared in these cases:

For the Appellants : Mr V.K.Rao, Sr Advocate with Mr Ayushya Kumar in
LPA Nos.1056/2011 & 217/2012.
Mr Karunesh Tandon in LPA Nos.135/2012 & 203/2012.
For the Respondents : Mr S.S.Upadhyay.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. This batch of appeals raises a common question of law and is being disposed of by this common order.
2. The common question of law involved in these appeals relates to whether a court can go into the question of whether relationship of employer-employee exists between the parties while disposing of an application under Section 17-B of the Industrial Disputes Act, 1947 (in short 'ID Act').

3. The present appeals arise from orders dated 19.10.2011 in WP(C) No.4558/2010, 09.01.2012 in WP(C) No.15980/2006, 25.01.2012 in WP(C) No.4376/2007, 06.09.2011 in WP(C) No.5658/2008 & 27.01.2012 in Review Petition No.66/2012 in WP(C) No.5658/2008, whereby the learned Single Judge had directed payment of full wages to the workman pending the hearing and final disposal of the respective writ petitions. It would be necessary to note that all these writ petitions had been preferred by the appellants herein respectively against the industrial awards directing reinstatement of the workmen with backwages. During the pendency of the said writ petitions the workmen had filed applications under Section 17-B of the ID Act seeking payment of wages till the disposal of the respective writ petitions. The learned Single Judge by the impugned orders had directed the appellants herein to make payments to the workmen under Section 17-B of the ID Act.

4. On behalf of the appellants the learned senior counsel Mr V.K.Rao urged that before any direction is given under Section 17-B of the ID Act, the court ought to have determined whether relationship of employer-employee existed between the parties or not.

5. In our opinion the impugned decision do not suffer from any defect since the learned Single Judge held that investigation into evidence or going into the merits of the matter cannot be directed or carried out while disposing of an application under Section 17-B of the ID Act. We say so for the following reasons:-

- (i) In **Dena Bank vs. Kiritikumar T. Patel**, (1999) 2 SCC 106, the Supreme Court observed as follows:-

“21. As indicated earlier Section 17-B has been enacted by 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 proceedings in which the said award is under challenge before the High Court or the 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. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character, Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words “full wages last drawn”. To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or the Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside, it would result in the employer being required to give effect to the

award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17-B to cast such a burden on the employer. In our opinion, therefore, the words “full wages last drawn” must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in *Visveswaraya Iron & Steel Ltd.*, (1994) 84 FJR 46: (1994)1 LLJ 555 (Kant) or the Bombay High Court in *Carona Sahu Co. Ltd.*, (1995) 70 FLR 25: (1994) 2 LLN 834(Bom).”

From a plain reading of the above extract it is evident that in order to give relief to a workman, who has been ordered to be reinstated by an award of a Labour Court or an Industrial Tribunal, during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court, Section 17-B of the ID act has been enacted. The payment envisaged under the said provision is in the nature of subsistence allowance which is not refundable or recoverable from the workman even if the award is set aside by the High Court or the Supreme Court.

- (ii) In a recent decision of this Court in LPA No.165/2012 (*Municipal Corporation of Delhi vs. Santosh Kumari & Anr.*) delivered on 24.08.2012, *inter alia*, the following principle has been culled out from various judicial pronouncements touching

upon the various aspects for grant of interim relief under Section 17-B of the ID Act in the following manner.

“(i).....

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

(vii).....

(viii).....

(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 (5) AD Delhi 413; (2000) 87)

(x)

.....”

6. Therefore, it is apparent that while considering an application under Section 17-B of the ID Act the Court cannot go into the merits of the case in the writ petition (Re: Anil Jain vs. Jagdish Chander, (2000) 86 DLT 510).

7. In the present appeals the contention raised by the appellants is with regard to the existence of the employer-employee relationship. The said issue would require an investigation into the merits of the case in the writ petition

and would also entail investigation into evidence which cannot be directed on an application under Section 17-B of the ID Act.

8. In view of the settled position of law which has been discussed above, we find no merit in these appeals and they are accordingly dismissed. There shall be no order as to costs.

DECEMBER 06, 2012

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SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.