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

+ LPA No.433/2012 & CM Appl. No.10233/2012

**DELHI STATE INDUSTRIAL DEVELOPMENT
CORPORATION LTD**

..... Appellant

Through: Mr. Amiiet Andlay, Advocate.

versus

VIJAY KUMAR

..... Respondent

Through: Mr. Anuj Aggarwal, Advocate.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

06.09.2012

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1. Report is received from Mediation and Conciliation Centre stating that the mediation was unsuccessful. The appeal shall have to be heard on merits.
2. Accordingly, we have heard the matter on merits. The appellant herein, by this appeal, challenges the Order of the learned Single Judge passed in respondent's application filed under Section 17B of the Industrial Disputes Act, 1947. The learned Single Judge has allowed the application and directed the appellant to make payment of wages under Section 17B of the I.D. Act from the date of award.
3. In this appeal, the challenge to the aforesaid Order is to a limited

extent. It is the submission of the appellant that the Order of payment of wages under Section 17B of the I.D. Act should have been from the date of application, which was filed on 24.1.2011 and not from the date of award, i.e., 20.3.2009.

4. The admitted facts are that against the award dated 20.3.2009, writ petition was filed by the appellant on 4.8.2009 and after service of notice the respondent-workman had put in appearance through counsel in the said case in January, 2010. Thereafter, application under Section 17B of the I.D. Act was filed on 24.1.2011, i.e., one year after entering the appearance.

5. In a case like this, whether the order under Section 17B of the I.D. Act should be made effective from the date of award or from the date of application, precisely this very aspect is considered in detail by this Bench in the case of ***Municipal Corporation of Delhi Vs. Santosh Kumari & Anr.*** (LPA No.165/2012) vide judgment dated 24.8.2012 holding as under:

“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 explained, the delay 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.”

6. Applying the aforesaid test, when the application is filed after one

year, we do not find that it was such an unduly delayed application after entering the appearance. Therefore, order granting the wages from the date of the award is justified on the facts of this case.

We, thus, dismiss this appeal.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

SEPTEMBER 06, 2012

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