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$~ **38,42,44,47-49, 51-69, 71-72**

% **20.03.2013**

Present: Mr. Raj Birbal, Sr. Adv. with Ms. Raavi Birbal, Advocates for the petitioners /BSNL.

Mr. Vikram Nandrajog, Mr. Amit Singh, Sheetesh Khanna, Sushil Jaswal, Advocates for the respondents.

\+ **W.P.(C) Nos. 3151/07, 3155/07, 3158/07, 3161-63/07, 3628-30/07, 3632-35/2007, 3637-40/2007, 3642-49/2007, 3651/2007 and 3653/2007**

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In view of the orders passed today in Writ Petition (C) No. 3150/2007, these writ petition also stand disposed of.

All the pending applications, if any, also stand disposed of.

VIPIN SANGHI, J

MARCH 20, 2013
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20.03.2013

\+ **W.P.(C) 3150/2007**

B.S.N.L. ..... Petitioners

Through: Mr. Raj Birbal, Sr. Adv. with Ms. Raavi Birbal, Advocate

versus

ATTAR SINGH & ORS. ..... Respondents

Through: Mr. Vikram Nandrajog, Mr. Amit Singh, Mr. Sheetesh Khanna and Mr. Sushil Jaswal, Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

1. This batch of writ petitions under Article 226 of the Constitution of India have been preferred by Bharat Sanchar Nagam Limited (BSNL) to assail the common award passed by the Central Government Industrial Tribunal cum Labour Court II, Rajendra Place, Rajendra Bhawan, New Delhi (CGIT), in several references made in respect of the respondent workman.

2. The reference in respect of each of the workman is more or less identical. The same issues arise from the references and, consequently, have been dealt with in the common award passed by the CGIT. As an example, I am reproducing herein below the reference made in respect of Sh. Balbir

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Singh – the respondent in W.P.(C.) No.3649/2007, which reads as follows:

> "*Whether the action of the management of GMTD, BSNL, Faridabad in terminating/disengaging the services of Sh. Balbir Singh So Sh. Khajan Singh w.e.f 01.09.2002 without complying with the provisions of the ID Act, 1947 and non-conferring of temporary status on him in accordance with the DOPTS Scheme of September 1993 and thereby non regularizing his services in terms of provisions of CL(R&A) Act, 1970 employed through security contractors viz. M/s Luxman Security Agency, M/s. Keshav Security Services, M/s. Anuradha Security Services was just, fair and legal? If not, what relief he is entitled to and from which date?*".

3. The CGIT by the impugned award has answered the reference in favour of the workmen by holding that the action of the petitioner management in terminating/disengaging services of the workman without complying with the provisions of Industrial Disputes Act, 1947 (the Act), and in not conferring temporary status on them in accordance with the Department of Personnel Training (DoPT) Scheme of September 1993 and thereby not regularizing their services in terms of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (the CLRA Act) employed through security contractors namely, M/s. Luxman Security Agency, M/s Keshav Security Services, M/s. Anuradha Security Services is not just or fair or legal. The management has been directed to reinstate all the respondent workmen. Some of the workman in respect of whom references were made had not led their evidence and, consequently, no such direction has been issued in respect of them. They are not before this Court. The CGIT has also awarded 50% back wages to the respondent workman w.e.f. 01.09.2002.

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4. Ms. Birbal, learned counsel for the petitioner has submitted that the only three issues which were referred for determination by the CGIT were in relation to:

i) The termination/disengagement of the services of the workman with effect from 01.09.2002 – whether the same was illegal on account of non compliance of the provisions of Act;

ii) Whether the non conferring of temporary status on the workman in accordance with DoPT Scheme of September 1993 was fair just and legal, and;

iii) Whether the non regularization of the services of the workman in terms of the provisions of the CLRA Act – employed through security contractors, was just fair and legal.

5. Learned counsel submits that the terms of reference did not refer the issue with regard to the contracts between the petitioner and the contractors, namely, the three service security agencies mentioned in the terms of reference, being sham or a camouflage, for adjudication by the CGIT.

6. Learned counsel for the petitioner submits that in the BSNL there was a practice of appointing labour contractors for providing of security services. She submits that such contracts were legal, as there was no prohibition against the employment of contract labour for provision of

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security services – as no notification under section 10 of the CLRA Act had been issued by the Central Government. She submits that earlier private security agencies – such as those mentioned in the terms of reference, were also being engaged. However, an office memorandum dated 01.02.1999 was issued by the Department of Public Enterprises, which was later followed by the Defence Ministry's circular dated 26.04.2001. They required that all BSNL establishments should engage the security personnel from the Director General Resettlement (DGR) sponsored agencies only.

7. She submits that in the light of the aforesaid instructions, BSNL issued a memorandum dated 03.04.2002 incorporating the said condition. Consequently, the contracts with private security agencies which were not sponsored by the DGR had to be discontinued. Learned counsel submits that all the respondents were employed through the said security agencies.

8. Learned counsel for the petitioner has drawn the attention of the Court to the judgment of the Division Bench of this Court in ***Keshav Security Services Ltd. v. Union of India & Ors.***, 2004 II A.D. (Delhi) 469. The petitioner Keshav Security Services Ltd. had sought to assail the prescription laid down by the Department of Enterprises, as aforesaid, that only DGR sponsored agency be engaged for providing security services to the petitioner.

9. The Division Bench rejected the said challenge by holding that it was not necessary for the BSNL to adopt open tender system for engagement of security services, and the petitioners action of drawing security personnel through a DGR sponsored agency was neither arbitrary

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nor discriminatory, and the same was held as not being violative of Article 14 of the Constitution of India.

10. Learned counsel for the petitioner has submitted that a perusal of the award shows that the same is primarily premised on a finding that the contracts between the petitioner and the security agencies were sham and a camouflage. She submits that the said issue did not arise for consideration before the CGIT – either from the terms of reference, or even from the pleadings of the parties. She has referred to the following extract from the impugned award to submit that the discussion and finding of the CGIT to the effect that the contract between the petitioner and the security agencies are sham and a camouflage has swung the decision of the tribunal in favour of the workman. The relevant extract in the award reads as follows:

> *"It became quite obvious that the management has not filed copy of even contract agreement with the contractor and documents regarding payment to the contractors. The workmen have filed attendance sheets to show their presence. The management has not denied the photocopies of attendance sheets filed by the workmen. There is no endorsement of denial. The management witness has not stated in his cross examination that photocopies are not true copies of the original attendance sheets. The original attendance sheets are in the possession of the management. So the workmen cannot be expected to file the same. The workmen have filed attendance sheet from January, 1996 to January, 1998. These attendance sheets are admissible in evidence as the originals are n the possession of the management. This proves the fact that the workmen have worked in the premises of the management as Security Guards continuously from January, 1996 to January, 1998.*
>
> *The case of the workmen is that they were engaged in 1994,*

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1995, 1996, 1997, 1998 and they have worked continuously till 01.09.2002. The chart of the duration of work of the workmen has been given.

The workmen have deposed that they worked under the supervision and control of the management. Duty was assigned to the workmen by the Junior Engineer of the management. It was the burden of the management to prove that the contractors have made payment to the workmen. No such paper in proof of the payment being made by the contractors to the workmen has been filed by the management.

It was further submitted that there was no contract agreement between the contractors and the management. The workmen were taken directly by the management. The contractors were mere name lender. They got some commission.

In case of real contract there is agreement between the management and the contractor for supply of workmen on certain terms and conditions. Wages are to be paid by the contractor. EPF is to be deposited by the contractor. The workmen are enrolled in ESIC. The management has not filed any paper to prove that EPF was deducted from the wages of the workmen and their names were registered by the contractors under the ESIC Scheme. No such document has been filed. This proves that there was no contract in existence and the workmen worked directly under the control and supervision of the management. The workmen cannot be expected to file slips of EPF and the Registration Card under ESIC. These are material documents for a valid contract but no such document has been filed by the management. The workmen have filed photocopies of attendance sheets ve4rified by the Sub-Divisional Engineer, SDE and the Junior Engineer and these documents have not been denied by the management. So it stands proved that the workmen have worked from 1994 onwards as has been specified in the

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chart of tenure of work of the workmen. It also stands proved that the management has been making payment directly. There is no contractor even as name lender. No EPF has been deposited. The workmen have not been registered under ESIC Scheme. The management has committed grave violation of the provisions of the ID Act, 1947, PF Act and even ESIC. Such practice has been held as unfair labour practice under ID Act, 1947."

11. Learned counsel for the petitioner submits that the statement of claims filed by the respondent workmen is identical. In the said statement of claim, there is not a whisper to suggest that the security contracts entered into between the petitioner and the contractors were sham or camouflage. The said statement of claim is rather short and cryptic. The relevant part of the same reads as follows:

"1. That the Claimant/Workman was employed by the above management since Feb. 1999 and at the relevant period was working as a S. Guard and was drawing a monthly wages of Rs. 2650/-.

2. That the work and conduct of the workman was quite satisfactory during the period of employment.

3. That the DEMAND NOTICE of claimant/workman may also be read as part of this claim statement. The photocopy of the Demand Notice is enclosed as Annex.A with this claim statement.

4. That the aforesaid management terminated the services of the above named workman with effect from 01.09.2002 by verbal order. This is a case of refusal of duty and amounts to termination of services and retrenchment and that too without compliance of the mandatory pre-requisites of Section 25-N&25-G of the Industrial Disputes Act, 1947. It is also a case

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of unfair labour practice. After termination my services the aforesaid Management appointed new other employee. In my place which is violation of the I.D. Act, 1947.

5. That the termination of services in the instant case is wrongful, illegal, against the principles of natural justice, mala-fide and a case of vindictiveness and also unfair labour practice, the workman is, therefore, entitled to re-instatement with all consequential benefits including wages for the intervening period.

It is, therefore, prayed that the Hon'ble Court be pleased to pass an award in directing the Respondent/Management to re-instate the workman in their services with full back wages, and with continuity of services and with all benefits".

12. She submits that a perusal of the demand notice which was annexed as Annexure-A to the statement of claim, also placed on record, shows that the respondent workmen did not allege the contracts between the petitioner and the security agencies to be sham or a camouflage.

13. Learned counsel for the petitioner submits that the CGIT had no jurisdiction to go into the issue as to whether or not the contracts entered into between the petitioner and the security agencies were sham or a camouflage, since no such dispute was raised by the respondents; no reference was made by the appropriate government in that respect, and; there were no pleadings made to that effect by the respondent/claimants. She places reliance on the decision of this Court in ***Ashok Kumar & Ors. v. The State & Anr.*** in W.P.(C.) Nos.9438-42/2004 decided on 20.12.2006, MANU/DE/9807/2006. In this case, the learned Single Judge observed that no dispute had been raised about the contract being sham or a camouflage.

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The claim of the workmen was that they were direct employees of the management and did not claim that they were employees of the contractor. The Court observed:

> "*It is now settled law that where the workmen claim that the contract between principle employer and contractor was sham and camouflage, they have to raise an industrial dispute to that effect and it is industrial adjudicator who, after going through the evidence and the terms and conditions of the contract and other circumstances has to decide whether the contract between principal employer and the contractor was sham and camouflage*".

14. In para 7 of the judgment, this Court further observed as follows:

> "*It is obvious that the workmen in this case did not raise correct dispute and did not approach the appropriate Government with the contentions that the contract was sham and camouflage or that the contract labour system should be abolished. They got referred a dispute that they were the employees of the management and were not being regularized. This claim was found false. The Labour Court had no alternative but to dismiss the claim. It is settled law that the Labour Court/Tribunals cannot travel beyond the terms of reference. If no reference had been made to the Labour Court for determining whether the contract was sham and camouflage, the Labour Court could not have entered into this issue and decided whether the contract was sham and camouflage*".

15. Learned counsel for the petitioner has drawn the attention of the Court to the written statement filed by the petitioner before the CGIT. It is submitted that in its written statement, the petitioner had stated that there was no relationship of employer-employee between the parties. The

respondent workman had neither been engaged nor recruited by the petitioner management and that the respondents were not members of the service. No appointment letters have been issued to them, nor were their services terminated by the petitioner management. Reference had also been made to the aforesaid judgment of the Division Bench in the case of ***Keshav Security Services Ltd*** (supra). It was pleaded by the petitioner that the security personnel provided by the security agencies are in no way connected with the recruitment procedure of the petitioner management. Rather, they are employees of the agency under the terms of the employment settled between the workmen and the agency concerned.

16. Learned counsel for the petitioner has also referred to the affidavit by way of evidence filed by the petitioner management of Sh. Netra Pal Sing, AGM, Legal working in the office of the General Manager, Administrative Complex, Faridabad, wherein he had stated that the workmen were neither employed by the management nor were they terminated/retrenched and that there was no employer-employee relationship between the workman and the management. It was also affirmed that in view of the judgment in ***Keshav Security Services*** (supra), all the BSNL establishments engage the workman from DGR sponsored agency only.

17. Learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in ***Indian Drugs and Pharmaceuticals Ltd. v. The Workman, Indian Drugs and Pharmaceuticals Ltd.***, (2007) 1 SCC 408. The Supreme Court after referring to the judgment of the constitution bench in ***The Secretary, State of Karnataka & Other v. Uma Devi & Others***, (2006) 4 SCC 1 has observed that economic realities cannot be lost

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sight of. No doubt, Article 41 provides for the right to work, but this has been deliberately kept by the founding fathers of the constitution in the directive principles and hence made unenforceable in view of Article 37 of the Constitution, because the founding fathers in their wisdom realized that while it was their wish that everyone should be given employment, the ground realities of our country did not permit the same. The Supreme Court observed that Article 21 of the Constitution cannot be stretched so far as to mean that everyone must be given a job. The number of available jobs is limited and hence the Courts must take a realistic view of the matter and must exercise self restraint.

18. On the other hand, Mr. Nandrajog, learned counsel for the respondent workman has submitted that in the present case, the petitioner had failed to lead any evidence before the CGIT to establish that the workman had been engaged through the contractors. They did not produce any document or other evidence to show that there were any contracts entered into between the petitioner and the contractors/security agencies; that the security agencies had, in turn, posted the workman at the facilities of the petitioner; that the salaries of the workman have been paid by the contractors and not by the petitioner directly. It was not even disclosed as to which of the workman had been deployed through which of the contractors. Apart from filing the affidavit by way of evidence, as aforesaid, no documentary evidence was placed on record by the petitioner management. He submits that the case of the respondent workman was that they were direct appointees/employees of the BSNL.

19. Learned counsel for the respondent submits that the demand letters

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issued by the respondent workman categorically stated that the petitioner "*only had appointed me in this institution but had not given me any appointment letter nor any attendance card nor even any wages slip were given. The amount towards ESI and PF were being deducted from my monthly salary from the very beginning but neither I was given ESI card or any PF slip. And on the pretext of pension scheme, had got signed by me on blank papers, blank vouchers and blank vouchers*".

20. He submits that in their written statement, the management did not specifically disclose as to by which security agency, each of these workmen were deployed through. The said position was not elaborated even in their affidavit by way of evidence.

21. Learned counsel for the respondent has also referred to the cross examination of the management witness, Sh. Netrapal Singh conducted on 07.08.2006. The management witness had stated that they had not filed any record other than the written statement and affidavit. Learned counsel submits that the work of security guards is of a perennial nature. The petitioner required security guards at all its installation. The petitioner has not disclosed as to what is the requisite qualification under the recruitment rules for the posts of security guards. Consequently, it cannot be said that the appointment of the respondent workman was illegal or irregular.

22. Having heard learned counsel for the parties, perused the impugned award as well as the record relied upon by the parties, considered the various decisions cited before me and the respective submissions of the parties, I am of the view that the impugned award cannot be sustained and is liable to be

set aside.

23. I have already set out herein above the terms of reference made to the CGIT. The said terms of reference, which were made at the instance of the workmen do not contain any reference for examination of the issue whether the contracts between the petitioner and the security agencies were sham or a camouflage. On the contrary, the terms of reference themselves disclose that the workmen were employed through security contractors namely, M/s. Luxman Security Agency, M/s Keshav Security Services, M/s. Anuradha Security Services. Had the case of the respondent workmen being that the contracts between the petitioner and the aforesaid security agency were a sham or a camouflage, they would have sought a specific reference in that respect and, if not made, they would have either sought amendment of the reference as made, or assailed the same. However, no such steps in this regard were taken. Even in their statement of claim, the respondent workman did not raise any issue to assail the contracts entered into between the petitioner and the security agencies.

24. Pertinently, in the notices of demand – which are also more or less identically worded in respect of all the workmen, the workmen had stated in para 4:

> "*4. That you terminated my services w.e.f. 01.09.2000 without any written order or without any reason and recruited other new workers at my place. Only previous supervisor has remained,* ***on being asked you told that contract has been given to Anuradha Security Services.*** *You have neither give me any charge sheet nor any show cause notice nor has got any inquiry done nor has issued any termination letter nor has settled my accounts. This type of*

> *activity is wrong, illegal activity, vindictive, unjust labour practice and anti labour policy and side by side you have openly violated Section 25N and 25F of I.D. Act, 1947. As such I am entitled to reinstatement in my service alongwith full salary of my past and continuous and break up service with other benefits*". (Emphasis supplied)

25. Therefore, the case of the respondent workmen was that they were engaged through security agencies. Since no such dispute was raised or referred, the occasion for the petitioner to either plead or prove that the contracts were not sham or camouflage did not arise. The failure of the petitioner to produce the contracts and the other information in relation to these contracts could not have led to the conclusion that the contracts did not exist, or they were sham or camouflage. The fact that they were not sham or camouflage is evident from the fact that Keshav Security Services had even approached this Court to assail the termination of their contract by the petitioner and the imposition of the condition that only DGR sponsored agencies could be engaged for providing security services. It is also noteworthy that the petitioner is a government corporation. The provision of security services involves appointment of responsible and credible persons, since it has an element of trust and faith. Security services are availed of by the petitioner to safeguard its assets and properties. For such engagement, the petitioner was contracting with security agencies who were providing personnel at their responsibility. The petitioner, obviously, could not have engaged casual workers on individual basis for purpose of providing security services.

26. I may also refer to the cross examination of the management

witness Sh. Netrapal Singh. The said cross examination, in fact, supports the case of the petitioner as it clearly shows that the case of the respondent workman also was that they were engaged by the petitioner through contractors. In response to one question, the answer given by the management witness is: "*I am not aware whether the work done by the contractor have been accomplished by the workman in this case(s) or not*". In response to another query, the answer given by the witness is: "*It is incorrect to suggest that there is any tripartite agreement between the management, contractor and the worker*". The witness further states "*I do not know whether these workman have worked under the aforesaid contractor or not*".

27. The aforesaid answers clearly suggest that the stand of the respondent workman was that there were contractors engaged by the petitioner, and the workmen had performed the contracts by rendering their services thereunder. It is also pertinent to note that in the entire cross examination of the management witness, not a single suggestion has been given to the witness that the contracts between the petitioner and the security agencies were sham or camouflage.

28. Since no reference was made by the appropriate government on the issue of the validity of the contracts between the petitioner and the security agencies, the CGIT had no jurisdiction to examine the same. The decision in ***Ashok Kumar*** (supra) is clearly applicable in the facts of the present case. The approach of the CGIT, in the light of the aforesaid discussion, in declaring that the contracts between the petitioner and the security agencies were a sham or a camouflage is completely erroneous. The said issue did

not arise for consideration of the CGIT. The non filing of documents or any evidence in this respect by the petitioner was clearly on account of the fact that the said issue was not even raised by the respondents. On the contrary, they had admitted the position, and it was their own case that they had been engaged through contractors.

29. It is also interesting to note that on the one hand, the CGIT has held the contracts to be sham and camouflage, while on the other hand, while answering the reference it has been held that the action of the petitioner management in terminating/disengaging the services of the workman "*without complying with the provisions of ID Act, 1947 and non conferring of temporary status on them in accordance with the DOPTS Scheme of September 1993 and thereby* ***non regularizing their services in terms of provisions of CL (R&A) Act, 1970, employed through Security Contractors viz. M/s Luxman Security Agency, M/s Keshav Security Services, M/s Anuradha Security Services is neither just nor fair nor legal.*** *The management is directed to reinstate all the above named workmen applicants except S/Shri Mahesh (ID No.53/2004), Mukesh (ID No.56/2004) and Shri Amar Singh (ID No.90/2004) because these three workmen have not filed their affidavits along with 50% back wages w.e.f. 01.09.2002 and make payment of the entire arrears within two months from the date of publication of the award*". (Emphasis supplied)

30. From the aforesaid, it would be seen that the CGIT has itself observed that these workmen were employed through security contractors, namely M/s. Luxman Security Agency, M/s Keshav Security Services, M/s. Anuradha Security Services. The question of invoking the provisions of

CLRA Act would arise only if the services of the workmen were taken through labour contractors. The aforesaid declaration by the CGIT has embedded in it the declaration that the respondent workmen had been engaged through contractors. Therefore, there is no merit in the submission of the respondents that their case was that they had been directly engaged by the petitioner management or that they had, in fact, been engaged directly by the petitioner management. It was neither their case that they had been directly engaged by the petitioner management, nor was it so established by them on the record. Pertinently, they had not produced any letters of appointment issued by the petitioner appointing them as security guards. As aforesaid, the petitioner is a government corporation and it is absolutely unacceptable and unbelievable that persons to such vital positions – which involve trust and faith, would be appointed casually without even issuance of appointment letters.

31. A perusal of the impugned award shows that the same primarily proceeds on the basis that the contracts between the petitioner and the security agencies are sham and camouflage. As aforesaid, this finding has been rendered without jurisdiction. The CGIT was also swayed by the fact that the respondent workmen were able to establish that they had been working at the premises of the petitioner for a couple of years atleast. That, by itself, could not have lead to the conclusion that the relationship of employer-employee existed between the parties. This is for the reason that the petitioner does not even dispute the fact that the respondent workmen were serving the petitioner at its facilities. However, the case of the petitioner is that they were serving through contractors, i.e. security

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agencies. Rendering of such contract labour would not make the respondents the workmen of the petitioner.

32. The situation may be viewed from another angle. The award itself contains the dates on which these respondent workmen had been engaged. The said tabulation shows that the earliest engagements were made on March 1994. Engagements were made each year thereafter right upto the year 2000. According to the respondents, they were all disengaged on 01.09.2002. Even if the submission of the respondents: that they were directly engaged by the petitioner as casual workers were to be accepted – for the sake of argument, their engagements ranged between 8 years to 2 years. Even if they are treated as casual workers of the petitioner, since their appointments were made irregularly and not through the process of recruitment by public advertisement, they would not have a right to the post. Consequently, in any event, the direction to reinstate the respondents was not called for and cannot be sustained.

33. I may refer to the judgment of the Supreme Court in ***Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Another***, (2009) 15 SCC 327, wherein the Supreme Court has noted the shift in law, particularly in case of casual workers and those who are not regularly employed, it has been held that the relief of reinstatement does not automatically follow the finding that the termination is illegal and in breach of section 25F of the Act. The award of compensation has been held to be sufficient to meet the ends of justice. I may emphasise here itself that the respondents could not be said to be the casual employees/workman of the petitioner and the above reasoning has been given only as an additional reasoning.

34. Learned counsel for the petitioner points out that the respondent workmen have been receiving wages under section 17B of the Act. The Court has directed payment of the last drawn wages or the minimum wages, whichever is higher. The same has been paid from the date of the award onwards i.e. 04.12.2006 and the same continues to be paid even now. These wages have already been paid for over six years. It is submitted that each of the respondents have received wages under section 17B of the Act to the tune of over Rs.3 lacs (on the basis of the revised minimum wages from time to time, as they were higher than the last drawn wages) except in respect of the respondents in W.P.(C.) Nos.3152/2007, 3153/2007, 3154/2007, 3156/2007, 3159/2007, 3160/2007, 3596/2007 and 3650/2007, where the applications under section 17B are still pending consideration. These applications are being dealt with separately.

35. The respondents, as aforesaid, have received wages under section 17B in excess of Rs.3 lacs after their termination. I may observe that though while allowing the applications of the workman under section 17B of the Act, vide common order dated 13.10.2011, the Court had required the workman to give an undertaking to the Court that in case the writ petition succeeds, they shall refund the difference between the amount of last drawn wages and the minimum wages. The respondents have been receiving wages under section 17B at the minimum wages rates prevalent from time to time, which is higher than the last drawn wages drawn by them. The effect of the award being set aside would be that they would be required to refund the said difference. However, I am not inclined to direct the same, and the said amount could well be treated as adequate compensation payable to them

in lieu of reinstatement and back wages, even if it were to be accepted for the sake of argument that they were the casual workman of the petitioner. However, in respect of workmen who are found not entitled to wages under Section 17-B of the Act, no compensation is payable as they, in any event, are not workmen of the petitioner and, consequently, no case of retrenchment is made out by them against the petitioner.

36. Accordingly, the writ petitions are allowed and the impugned common award dated 04.12.2006 is set aside, leaving the parties to bear their respective costs.

37. All the pending applications stand disposed of.

VIPIN SANGHI, J

MARCH 20, 2013
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