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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1833 OF 2014

IN

WRIT PETITION NO. 10815 OF 2013

Vivekanand Sonawane .. Applicant

Vs.

Pawan Hans Helicopters Ltd .. Respondent

Mr.Neel G.Helekar, Advocate for the Applicant.

Mr.T.R.Yadav, Advocate for Respondent.

CORAM : R.G.KETKAR, J.

DATE : 30th JANUARY, 2015

P.C. :

. Heard Mr.Neel G.Helekar, learned Counsel for the applicant and Mr.T.R.Yadav, learned Counsel for the opponent-original petitioner at length. Rule. Mr. Yadav waives service for the respondent. At the request and by consent of the parties, rule is made returnable forthwith and the application is taken up for final hearing.

2. By this application, the original respondent has sought direction against the opponent- original petitioner to pay wages as per section 17-B of the Industrial Disputes Act, 1947 (for short 'Act'). In support of this application, Mr.Helekar invited my attention to paragraph 3 of the application as also the additional affidavit dated

25/11/2014 made by the applicant in pursuance of order dated 06/08/2014. He submitted that till date, the applicant has failed to secure any employment inspite of making sincere efforts. In additional affidavit, it is set out that the applications made by him for securing jobs were rejected by the companies. He could serve in the companies for few months. In paragraph 3, it is further stated that from the date of the award, 30/04/2013, he is unemployed and does not have any source of income. Because of his age, he also could not apply to any company for employment from the date of the award till today. His father was a government servant in postal department and after his death in 2003, his mother is getting pension from the government. His family consisting of his wife and daughter is surviving on that pension.

3. Mr.Helekar submitted that during the pendency of the writ petition in this Court, the respondent is liable to pay full wages drawn by him, inclusive of any maintenance allowance admissible to him under any rule in terms of section 17-B of the Act. In support of this submission, he relied upon following decisions.

- i) Dena Bank Vs. Ghanshyam, (2001) 5 Supreme Court Cases, 169 and in particular paragraph 12 thereof.
- ii) Amit Kumar Vs. Indian Airlines Ltd, (2006)2 Mh.L.J 210 and in particular paragraph 16 thereof.
- iii) Raptakos Brett and Co.Ltd. Vs.Workmen of Raptakos Brett and Co.Ltd., 2008(2) Mh.L.J, 229, and in particular paragraph 4 thereof.

iv) S.S.Sayyad alias Saiyed Vs. Hindustan Aeronautics Ltd., 2012(6) Mh.L.J. 81 and in particular paragraph 20 thereof.

v) Delhi Transport Corporation Vs. Presiding Officer, Labour Court No. X, 2004 (3) LLJ 700 and in particular paragraph 5 thereof.

Mr.Helekar further submitted that no reply is filed opposing the application.

4. On the other hand, Mr.Yadav invited my attention to the salary statement for the month of May 2000 issued by PANCARD Clubs Limited as also salary slip issued by Omkar Enterprises for the month of September 2003. He submitted that in the affidavit, applicant has not given details as regards how many months, he was gainfully re-employed as also how many months salary he is receiving. He submitted that no case is made out for granting any relief under section 17-B of the Act.

5. I have considered the submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, opponent herein has instituted Writ Petition No. 10815 of 2013 challenging the judgment and award dated 30/04/2013 passed by the learned Presiding Officer, Central Government Industrial Tribunal No.2, Mumbai (for short 'Tribunal') in Reference No.CGIT – 2/34 of 2005. By that order, the Tribunal partly allowed the reference and directed the original petitioner to reinstate the workman forthwith with 25% back wages and all other benefits with continuity in service. The petition was admitted on 11/02/2014

by issuing rule and interim relief in terms of prayer clause (c) was granted.

6. Section 17-B of the Act reads as under :

17-B: Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.

7. As noted earlier, the Tribunal by its award directed reinstatement of the applicant and the original petitioner-- employer has challenged that award in this Court by way of writ petition. The petition is pending before this Court for consideration. The applicant has filed affidavit to the effect that after making of the award, he had not been employed in any establishment. Proviso to section 17-B lays down that whether it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been

receiving adequate remuneration during any such period or part thereof, the Court has to order that no wages shall be payable under this section for such period or part, as the case may be. The applicant has stated in the application and additional affidavit about his employment. He is not gainfully employed after the award. The original petitioner has not brought any material on record to indicate that after making of the award dated 30/04/2013, the applicant was gainfully employed. In view of the decisions in the cases of i) **Dena Bank** (*supra*) and more particularly paragraph 12 thereof; ii) **Amit Kumar** (*supra*) and more particularly paragraph 16 thereof; iii) **Raptakos Brett and Co.Ltd.**(*supra*) and more particularly paragraph 4 thereof; iv) **S.S.Sayyad alias Saiyed** (*supra*) and more particularly paragraph 20 thereof and v) **Delhi Transport Corporation** (*supra*) and more particularly paragraph 5 thereof, I find merit in the submission of Mr.Helekar.

8. In view thereof, applicant has made out a case for granting relief. The original petitioner shall pay wages as per section 17-B of the Act to the applicant.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)