

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.235 OF 2012
IN
L.P. APPEAL NO. 303 OF 2010
IN
WRIT PETITION NO. 1178 OF 1996**

Namdev B. Sanas ... Applicant

V/s.

Indian Hotels Co. Ltd. & Anr. ... Respondents

.....
Mr. N. M. Ganguli a/w. Ms. Karuna Yadav, Advocate for the Applicant.
Mr. G. S. Godbole, Senior Counsel a/w. Mr. Navraj Jalota a/w. Mr. Satpalkar a/w. Mr. Shah i/b. Mulla & Mulla & CBC, Advocate for the Respondents.

.....

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

DATED : SEPTEMBER 23, 2015.

P.C.

The applicant seeks directions for payment of wages as per the provisions of Section 17-B of the Industrial Disputes Act, 1957.

2 The Applicant and the respondents both have

preferred different LPAs against the judgment and order passed by the learned Single Judge in Writ Petition No.1178 of 1996 and 3529 of 1996 dated 18th October, 2010. Both the Appeals were admitted by this Court. By an order dated 16th March, 2011, the Division Bench of this Court passed the following order:

“1. All appeals are admitted.

2. Operation of the Judgment and Order of the Learned Single Judge is stayed. Similarly, the Judgment and Award passed by the Labour Court directing reinstatement and payment of back wages to the workman is also stayed with liberty to the workman to file application under section 18(B) of the Industrial Disputes Act, if so advised. That will be considered on its merits.

3. Advocates appearing for the respective parties waive notice in the concerned Appeals. It will be open to the parties to file additional paper book, if so advised.”

3 The present application seeking relief under Section 17(B) of the Industrial Disputes Act was filed on 29th March, 2012. The counsel appearing for the applicant submits that he is fighting the litigation since last more than 25 years. The Labour

Court had passed an Award on 28th August, 1995. The learned Single Judge decided the Writ Petition by an order dated 18th October, 2010 and the LPAs were admitted on 16th March, 2011. The counsel submits that in view of the judgment of ***Dena Bank Vs. Kiritikumar T. Patel***¹ and the view adopted by the Division Bench of Delhi High Court in case of ***Rajgariha Vishram Sadan Vs. Vijay Kate***², this Court could grant substantial amount under Section 17-B instead of restricting the amount to last wages drawn by the applicant. The counsel submits that the applicant is in need of amount. The petitioner would reach age of superannuation next year. He submitted that the present LPAs have not been listed for hearing and the same would take sufficient time, in view of the pendency of the Appeal. Considering all these facts and circumstances, the learned counsel urges that a realistic view be taken for granting substantial amount under Section 17-B of the Industrial Dispute Act.

4 The learned senior counsel appearing for the employer - respondents has referred to various orders passed by this Court. He submitted that under Section 17-B of the

1) AIR 1998 SCC 511

2) LPA No.571/2006 dt. 13.09.2006

Industrial Dispute Act, 1957, the applicant is entitled to last drawn wages. As submitted by the learned counsel, the last drawn wages were as under:

<u>Date of last wages</u>	<u>Amount</u>
5 th February, 1990	Rs.2067/-
28 th August, 1995	Rs.3957/-
18 th October, 2010	Rs.25711/-
16 th March, 2011	Rs.4665.40

As on today the minimum wages would be Rs.8628/-. The learned counsel submits that the substantial issues are raised in the LPAs filed by employer and, in view of the fact that the Appeals are pending, appropriate orders be passed in accordance with law.

5 We have perused the order passed by the learned Single Judge. We have also perused the judgments cited in the cases of ***Dena Bank Vs. Kiritikumar T. Patel*** (supra) and ***Rajgariha Vishram Sadan Vs. Vijay Kate*** (supra). The Apex Court in the case of ***Dena Bank Vs. Kiritikumar T. Patel*** (supra) in paragraph no.22 has observed as under:

22. *As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass a order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be de hors the provisions contained in Section 17-B and while giving the direction the Court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. (1987 Lab IC 1468)(supra) that in exercise of the power under Articles 226 and 136 of the Constitution an order can be passed denying the workman the benefit granted under Section 17-B. The conferment of such a right under Section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution.”*

6 We have noticed that in view of the orders passed by the learned Single Judge on 25th October, 1996 in Civil Application No.4713 of 1996, the employer had deposited some amount with the registry of this Court. The said amount is substantial amount accumulated so far.

7 The issue concerning grant of relief under Section 17-B of the Industrial Dispute Act, 1957 is required to be considered in the peculiar facts and circumstances of this case. We have perused the record and the orders passed in the proceedings. The applicant is fighting the litigation since more than 25 years. It was informed that within a year, the applicant would reach the age of superannuation. The term "last drawn wages" is, therefore, considered in the light of the facts and circumstances brought before us and in view of the judgment cited above. We find that it would be reasonable and in the interest of justice that the applicant is awarded wages in the following terms:

:: ORDER ::

- (i) We direct the respondents to pay the applicant today's minimum wages i.e. at the rate of Rs.8628/-

(rounded to Rs.8600/-), per month from the date of filing of the application, until further orders;

(ii) The arrears shall be deposited with the Registry of this Court from the date of filing of the application till the end of September, 2015, within six weeks;

(iii) The applicant would be entitled to withdraw the said amount on furnishing personal undertaking to the effect the applicant shall be depositing the amount with the Registry of this Court, in case of further orders passed by this Court;

(iv) Application is disposed of with liberty to both the parties.

(S. B. SHUKRE, J.)

(NARESH H. PATIL, J.)