

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

NOTICE OF MOTION NO. 35 OF 2015

IN

WRIT PETITION NO. 540 OF 2014

Mr. Sanjay Sitaram Padwal.

... Applicant.
(Orig. Respondent)

In the matter between

Tata Memorial Hospital.

... Petitioner.

V/s.

Mr. Sanjay Sitaram Padwal.

... Respondent.

Mr. Vishwambhar M. Parkar for the Applicant/Orig. Respondent.
Mr. S.K. Talsania, Sr. Advocate a/w. Mr. Agnel Carriero & Mr.
Sagar Sheth i/b. M/s. Mulla & Mulla & Craigie Blunt & Caroe for
the Respondent/Orig. Petitioner.

CORAM : N.M. JAMDAR, J.

DATE : 21 SEPTEMBER, 2015.

P.C. :-

By a speaking order dated 16 June 2014, the Petition was admitted. By way of interim relief, the Respondent – Original Petitioner was directed to deposit 50% of the back wages, and the Applicant – Original Respondent was permitted to withdraw the said amount upon furnishing security and was also permitted to

withdrawal of the back-wages from the date of the impugned order till the date of the admission without furnishing any security.

2. This Notice of Motion is taken out under Section 17-B of the Industrial Disputes Act, 1947. The Applicant has pleaded that after his termination from services, he is unemployed and despite of his best efforts, he is not able to secure any employment. Reply has been filed by the Respondent – Original Petitioner.

3. I have heard the learned Counsel for the parties. I have perused the contentions regarding unemployment. There is nothing to contradict the assertion of the Applicant that he is unemployed since his date of termination. Considering mandate of Section 17-B of the Industrial Disputes Act, 1947, case is made out for grant of wages to the Applicant.

4. The learned Counsel for the Applicant has pressed a relief that the Original Petitioner be directed to pay the last drawn wages or the minimum wages whichever is higher. It is asserted that in the present case, the minimum wages are higher and that should be paid by the Original Petitioner. The learned Counsel for the Applicant has placed reliance on the decision of the learned Single Judge of Delhi High Court in *Delhi Transport Corporation v/s. Presiding Officer, Labour Court No. X & Ors. [(2004) III CLR 249]* and unreported decision of the learned Single Judge of

this Court in Civil Application No. 384 of 2011 in Writ Petition No. 5729 of 2011. He contended that in view of these decisions the Court can direct grant of minimum wages. Mr. Talsania, the learned Senior Advocate for the Original Petitioner on the other hand has placed reliance on the decision of the Apex Court in ***Dena Bank v/s. Kiritikumar T. Patel [(1999) 2 SCC 106]***.

5. The Apex Court in the case of ***Dena Bank (Supra)*** has clarified the phrase “full wages last drawn” and has emphasized that the phrase could not be stretched further than necessary and should be read literally. The Apex Court however has kept open the powers of the High Court under Article 226 of the Constitution of India to grant higher relief depending on the facts and circumstances.

6. Therefore, the prayer of the Applicant for grant of minimum wages, by invoking equity jurisdiction of this Court needs to be examined in the context of the facts of the present case. The Original Petitioner has deposited an amount of Rs.8,10,264/-. Liberty is already given to the Applicant to withdraw this amount upon furnishing security. It is also placed on record by the Original Petitioner that the wife of the Original Applicant runs a tiffin business. An affidavit is filed by the wife of the Applicant placing on record that she gets around Rs. 15,000/- per month from the said business.

7. Considering these facts, this is not a fit case where equitable jurisdiction of the Court for grant of a higher amount than what is specified under Section 17-B of the Industrial Disputes Act. Such orders are not to be routinely passed.

8. Accordingly, the Notice of Motion is partly allowed. The Respondent- Original Petitioners are directed to pay the Applicant, wages as per Section 17-B of the Industrial Disputes Act, 1947. Arrears to be calculated from the date of the admission of this Writ Petition. Arrears to be paid to the Applicant within period of eight weeks from today.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy
of the original signed Order.