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

+ LPA 176/2017 and CM No.10384/2017

MANAGEMENT OF HINDUSTAN TIMES LTD Appellant

Through: Mr.Sandeep Sethi, Sr. Advocate with
Ms.Meghna Mishra, Mr.Mukul
Sachdeva, Mr. Mohit Mehta and
Mr.Naman Joshi

Versus

AITA RAM & ORS

..... Respondent

Through: Mr.Ramesh K. Mishra and
Mr.Rajnish Kumar, Advocate

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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20.04.2017

1. With the consent of both the parties, we have taken up the appeal for consideration today.
2. The appellant assails the order dated 1st March, 2017 passed by the learned Single Judge on CM No.2731/2017 in Writ Petition (C) No. 5607/2016 purporting to be an order passed in exercise of power under Section 17B of the Industrial Disputes Act, 1947.
3. It appears that the industrial award came to be made on 23rd January, 2012 in favour of the respondents herein directing their reinstatement and continuity of service. Several litigations on

either side were initiated in this Court some of which went upto the Supreme Court of India. Amongst these cases was the Execution No.23/2016 filed by the respondents under Section 11(6) of the Industrial Disputes Act, 1947 seeking execution of the industrial award dated 23rd January, 2012.

4. While considering this execution petition, the executing Court passed an order dated 14th May, 2016 directing that the respondents workmen shall be deemed to be in continuous service unless they have reached the age of superannuation overturning the plea of the employer that the services of the respondents stood freshly terminated by invocation of the provisions of Section 25FFF of the Industrial Disputes Act, 1947.
5. Aggrieved thereby, the appellants filed Writ Petition(C) No.5607/2016 challenging the said order on various grounds including the jurisdiction of the executing court to opine on the fresh order of termination of service under Section 25FFF of the Industrial Disputes Act, 1947. It appears that in this writ petition, the respondents filed CM No.2731/2017 invoking the provisions of Section 17B of the Industrial Disputes Act, 1947. This application came up for hearing on 1st March, 2017 when it was allowed directing the petitioner/appellant to make payment of the last paid monthly wages to the respondents with effect from the date of the passing of the order. It was observed that this direction was made without prejudice to the rights and contentions of the respective parties.

6. The appellant assails that this direction made by the learned Single Judge on 1st March, 2017, by way of the present appeal before us, contending that the order was passed without adequate opportunity to the appellant to file a response and also ignoring the challenge of the appellant to the effect that the learned Single Judge has no jurisdiction to make an order under Section 17B of the Industrial Disputes Act, 1947 inasmuch as there was no challenge to an industrial award in the writ petition which was the only circumstance in which Section 17B could be invoked.
7. The further ground of challenge by the appellant is to the effect that the learned Single Judge has given no reasons at all in support of the direction which was made and that the such order is premised purely on consideration of the one sided submissions by the counsel for the respondents.
8. A perusal of the order dated 1st March, 2017 would show that the learned Single Judge has taken on record the submission of the petitioner that it had reinstated the workmen in compliance with award dated 23rd January, 2012 and that by a subsequent event/development, the appellant had lawfully retrenched 163 workmen on 9th September, 2013 under Section 25FFF of the Industrial Disputes Act, 1947, without anything more. Therefore, there is substance in the grievance of the appellant that the impact of this event/development, which was subsequent to the reinstatement of the workmen in compliance with the award dated 23rd January, 2012, deserved to be considered while making an

order for interim wages.

9. An objection is taken by Mr.Sandeep Sethi, learned senior counsel for the appellant, that under Section 17B of the Industrial Disputes Act, 1947, jurisdiction to make a direction for payment of wages can be exercised only if the employer assails the industrial award before the higher Court. We are not examining this objection. However, the wider jurisdiction of the Writ Court to make interim orders in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India can be adverted to so far as the permissibility of making a direction against the employer to make payment of wages during the pendency of the writ petition is concerned. It cannot be disputed that the learned Single Judge could have exercised such power.
10. It appears that on the 1st of March, 2017 the appellant had not filed the reply to the application filed by the respondent. Learned counsel for the respondents submits that the notice stood issued in the application to the appellant on the application as back as on 23rd January, 2017 and that it was the appellant, who had delayed the matter and opted to not file a response.
11. Be that as it may be, the appellant is entitled to place its objections before the Court. It would be in the interest of justice if the appellant is permitted one opportunity to file a reply/response to the application and which would thereupon be required to be considered afresh. Given the delay caused by the appellant and harassment of litigation caused to the respondents, the appellant

must bear their litigation costs.

12. In view of the above, we direct as follows:

- (i) The order dated 1st March, 2017 passed on CM No.2731/2017 is hereby set aside and the application is remanded for final consideration before the learned Single Judge;
- (ii) the appellant shall file response, if any, to CM No.2731/2017 in W.P.(C) No. 5607/2016 within one week from today with advance copy to the learned counsel for the respondent, who may, file rejoinder thereto within a further period of one week thereafter;
- (iii) along with the rejoinder, the learned counsel for the respondents shall furnish the details as directed to be furnished in paragraph 5 of the order dated 1st March, 2017.
- (iv) CM No.2731/2017 shall be listed before the learned Single Judge for consideration on 16th May, 2017;
- (v) The respondents shall be entitled to litigation costs which are quantified at Rs.5000/- per respondent. The costs shall be paid to the respondents within one week from today.
- (vi) Learned counsel for the appellant and respondent both submit that the main matter is itself within narrow compass and having regard to the number of workmen involved deserves to be expeditiously disposed of.

- (vii) Upon a prayer being made for expeditious hearing, the learned Single Judge is requested to consider and grant the same as far as the same is conveniently possible.
13. The appeal is allowed in the above terms.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 20, 2017/sv