

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2937 OF 2013
IN
WRIT PETITION NO.9205 OF 2011**

Bharti Martand Awsari .. Applicant.

In the matter between

M/s. Mobile Creches .. Petitioner.

Vs.

Bharti Martand Awsari .. Respondent

Mr.Ankit Kulkarni i/b Ms.Gayatri Singh, for the Applicant.

Mr.Kiran Bapat i/b Desai & Desai Associates for the respondent.

CORAM : A.K. MENON, J.

DATED : 27TH MARCH, 2018.

P.C. ,

1. By this civil application, the applicant, who is original respondent seeks payment of wages under Section 17(B) of the Industrial Disputes Act from the date of termination dated 14th October, 1997 till date and thereafter from month to month.

2. In the Writ Petition, the petitioner (respondent in civil application) has challenged the judgment and award dated 15th February, 2011 passed by the IInd Labour Court, Pune in Reference (IDA) No.815 of 1998 by which the Court ordered reinstatement of the petitioner with

continuity of service and payment of back wages from 14th October, 1997. The Writ Petition was admitted vide order dated 20th March, 2012. However, the prayer for interim relief was refused as far as reinstatement is concerned. The petition has raised arguable questions as to whether the petitioner is an industry and Respondent No.1 is a workman. However, the said order granted stay subject to condition of payment of 50% of back-wages within a period of ten weeks. He further submitted that pursuant to admission of petition, the order of deposit of 50% back wages has also been stayed in Letters Patent Appeal (LPA).

3. Mr. Kulkarni, learned counsel for the applicant submitted that the applicant's husband is a construction worker and there are two young daughters studying in sixth and third standard respectively and financial condition of the applicant is stated to be weak and she is facing a lot of hardship. It is her contention that she is unable to find alternate employment and therefore she is entitled to payment of wages as per provisions of Section 17(B) of the Industrial Disputes Act.

4. Mr. Bapat, learned counsel appearing on behalf of the original petitioner has opposed the civil application on the basis of an affidavit in reply filed by Ms. Pranita Pravin Madkaikan, CEO of the petitioner. It is the petitioner's case that the applicant is an unskilled workman. He submitted that the petitioner is a Non Governmental Organisation (NGO) engaged in betterment of children of construction workers. There is no fixed

employment that is available with them and that entire team works in the direction of achieving the goals of the NGO.

5. Thus, the order refusing to stay reinstatement is challenged in LPA and the order of reinstatement has since been stayed. Mr. Bapat submitted that the petitioner is employed in CITU and that information has been deliberately suppressed from this Court. He further states that the applicant is unwilling to work anywhere else in view of current employment with CITU. He further submitted that in view of fact that the applicant was still seeking reinstatement and expressed willingness to work, one of the well wishers of the petitioner M/s. Global Management Services had offered a job to the applicant and requested her to meet with them on 15th January, 2013 in relation to providing with her a job. However, she has omitted to attend. The copies of letters from M/s. Global Management Services addressed to the applicant are annexed to the affidavit.

6. In rejoinder filed on 15th April, 2014, the applicant has reiterated that she has tried to get a job. She denied that she is working in the office of CITU for long time. She further denied that she is not willing to work elsewhere. She was also willing to contact M/s. Global Management Services but when she attempted to do so they were unavailable. She has stated that later she met Mr. Arvind Patil of M/s. Global Management Services on 11th April, 2014 and thereafter Mr. Arvind Patil was to revert.

7. In the affidavit in sur-rejoinder, Mr. Arvind Patil the CEO of

M/s. Global Management Services has refuted the contention in the rejoinder. That vide letter dated 15th January, 2013 the applicant had been offered a job with M/s. Global Management Services but the applicant had not reported to work, even as on date of affidavit they were willing to offer her a job which would pay her wages more than last drawn salary and that they would ensure more minimum wages. I have no reason to disbelieve the statements made in support of the petitioner's case especially since the petitioner is an NGO and the issue whether it is an "industry" is awaiting consideration.

8. Having heard learned counsel for the parties, I am of the view that no relief can be granted to the applicant. The petition raises an issue of considerable relevance and in my view, it is not appropriate to grant any relief specially since the jurisdiction of the Tribunal has been called into question and on the basis that the petitioner is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act even at the time of LPA. Although the petition was admitted on 20th March, 2012, the present civil application is taken out only on 19th September, 2013. In the facts of the case the demand for payment of wages under Section 17(B) on the date of termination and thereafter from month to month is not justified. Hence I pass the following order :

Civil Application is dismissed. No costs.

(A.K. MENON,J.)