

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|---------------------------|----------------------------|
| Reserved on<br>23.07.2018 | Delivered on<br>20.08.2018 |
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
AND  
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN  
W.A.Nos.1189 to 1191 of 2017  
and  
C.M.P.Nos.16827 to 16829 of 2017

1.The Management

M/s.British Airways  
Rep. by its Regional H.R. Manager,  
South Asia, DLF Plaza Tower,  
DLF, City Phase - 1,  
Gurgaon, Haryana - 122022.

2.Customer Service Manager,

M/s.British Airways,  
No.3 and 4, New Integrated Air Cargo Complex,  
Meenambakkam, Chennai - 600 027.

... Appellants in all the Writ Appeals/  
Respondents 1 & 2

versus

1.T.Jenifer Prasanna Kumari ...1<sup>st</sup> Respondent/Petitioner/  
2<sup>nd</sup> Respondent

2.The Presiding Officer,

The Central Government Industrial  
Tribunal cum Labour Court,  
Shastri Bhawan,

Haddows Road, Chennai - 600 006. ...R2/3<sup>rd</sup> Respondent in  
W.A.No.1189/2017

1.Ramesh Thangadurai ...R1/Petitioner

2.The Presiding Officer,

The Central Government Industrial  
Tribunal cum Labour Court,  
Shastri Bhawan,

Haddows Road, Chennai - 600 006. ...R2/3<sup>rd</sup> Respondent  
in W.A.No.1190/2017

1.Ramaraja Govindhan

...R1/Petitioner

2.The Presiding Officer,  
The Central Government Industrial  
Tribunal cum Labour Court,  
Shastri Bhawan,  
Haddows Road, Chennai - 600 006.

...R2/3<sup>rd</sup> Respondent  
in W.A.No.1191/2017

PRAYER in W.A.No.1189/2017: Appeal filed against the order passed by this Court dated 02.08.2017 passed in W.M.P.No.24417 of 2016 in W.P.No.13788 of 2016.

PRAYER in W.A.No.1190/2017: Appeal filed against the order passed by this Court dated 02.08.2017 passed in W.M.P.No.24418 of 2016 in W.P.No.13789 of 2016.

PRAYER in W.A.No.1189/2017: Appeal filed against the order passed by this Court dated 02.08.2017 passed in W.M.P.No.24419 of 2016 in W.P.No.13791 of 2016.

For Appellants :Mr.R.Prabhakaran  
in all the Writ Appeals

For Respondents: Mr.Balan Haridass for R1  
R2 - Court  
in all the Writ Appeals

#### J U D G M E N T

R.SUBRAMANIAN, J.

1. All these intra-Court appeals have been filed by the Management against the orders passed by the learned Single Judge directing payment of last drawn wages under Section 17(B) of the Industrial Disputes Act in W.M.P.Nos.24417, 24418 and 24419 of 2016.

2. The respondents in all these appeals were working in various capacities under the appellant Management. The appellant Management had terminated the services of the respondents by an order dated 16.02.2014 on the ground that in view of the policy decisions of the Government of India, the appellant Management is to handover their security operations to any other domestic Airline and therefore, the services of the respondents were no longer required by it. The employees viz., the respondents herein raised Industrial Disputes challenging the said terminations. The Industrial Disputes in I.D.Nos.91, 92 and 128 of 2015 were raised by the 1<sup>st</sup> respondent in W.P.Nos.1189, 1190 and 1191 of 2017 respectively.

3. The Labour Court by its award dated 08.02.2016, allowed the Industrial Disputes and directed reinstatement of all the petitioners with 50% back wages and continuity of service and

other attendant benefits. This award was challenged by the Management in W.P.Nos.13603 to 13606 of 2016, pending the above Writ Petitions the 3 employees viz., 1<sup>st</sup> respondent in W.A.Nos.1189, 1190 and 1191 of 2017 had filed Miscellaneous Petitions W.M.P.Nos.24417, 24418, 24419 of 2016 seeking payment of last drawn wages under Section 17(B) of the Industrial Disputes Act. The Management had also obtained orders of interim stay of reinstatement of these employees.

4. The learned Single Judge by the order impugned in these appeals dated 02.08.2017 held that the payment of last drawn wages under Section 17(B) is automatic and therefore directed the respondent Management to comply with the provisions of Section 17(B) of Industrial Dispute Act by paying the last drawn wages with effect from filing of the proceedings. Aggrieved, the Management is on appeal.

5. We have heard Mr.R.Prabhakaran, learned counsel appearing for the appellants and Mr.Balan Haridass, learned counsel appearing for the respondents.

6. During the hearing of the appeal Mr.R.Prabhakaran, learned counsel appearing for the appellants would produce before us certain documents to show that these respondents/employees have been gainfully employed in some other organizations. Taking note of the said claim we had required Mr.Balan Haridass, learned counsel appearing for the workmen to furnish the details of the employment of these workmen. Mr.Balan Haridass has produced salary slips of these workmen. He has also filed an affidavit with reference to two of the workmen viz., Ramaraja Govindhan and Ramesh Thangadurai who are the respondents in W.A.Nos.1190 and 1191 of 2017 respectively. Insofar as Jenifer Prasanna Kumar, the respondent in W.A.No.1189 of 2017 is concerned, the Management has filed an affidavit stating that she is gainfully employed as Air Product and Customer Service Manager with M/s.Aargus Global Logistics Private Ltd., and she is drawing a salary of Rs.1,00,000/- per month.

7. Mr.Balan Haridass is unable to refute the claim of the Management insofar as the 1<sup>st</sup> respondent in W.A.No.1189 of 2017 is concerned and he would fairly submit that in view of the averments made in the affidavit and the evidence produced in the form of employment details from the website of M/s.Aargus Global Logistics Pvt., Ltd., we may not be in a position to sustain the order of the learned Single Judge insofar as the 1<sup>st</sup> respondent in W.A.No.1189 of 2017 is concerned. In the light of the above said submissions made by the learned counsel for the respondents, we are of the considered opinion that the said appeal has to be allowed setting aside the order passed by the learned Single Judge in W.M.P.No.24417 of 2016. Accordingly, W.A.No.1189 of 2017 will stand allowed, the order in



W.M.P.No,24417 of 2016 directing payment of wages under Section 17(b) to the respondents in W.A.No.1189 of 2017 will stand set aside.

8. Insofar as the other two appellants are concerned Mr.Balan Haridass has produced the salary slips of those employees. The Management of British Airways has also filed an affidavit through Mr.Sanjay Krishan Soni, the Regional Finance Manager - South Asia disclosing the last drawn wages of these two employees. It is seen from these documents that the employees who were receiving a salary i.e., basic salary and HRA of about Rs.36,916/- are now working in a different Company at a much lower salary. Insofar as Mr.Ramraja Govindan the respondent in W.A.No.1191 of 2018 is concerned his salary slip for the month of March 2018 would show that the basic salary and HRA received by him is about Rs.12,834/- and insofar as the Ramesh Thangadurai is concerned the basic salary and HRA received by him during the month of March 2018 is about Rs.15,175/-.

9. Pointing out the above difference, Mr.Balan Haridass would contend that these employments cannot be said to be gain full employments. Relying upon the language of Section 17(B) of the Industrial Disputes Act, Mr.Balan Haridass would claim that the employees can be denied 17(B) wages only if it is shown that they are in gainful employment i.e., they are drawing more salary than their last drawn wages with the appellant Management. Mr.Balan Haridass would also rely upon the recent judgment of the Hon'ble Supreme Court Rajeswar Mahto Vs. Alok Kumar Gupta., reported in 2018 (3) Scale Page 323, where the Hon'ble Supreme Court has held that once reinstatement is ordered and the same is stayed by the High Court or the Hon'ble Supreme Court, payment of 17(B) wages is automatic. Mr.Balan Haridass has also stated that the workmen are ready to join the services of the appellant if only the appellant is ready to take them back.

10. Per contra Mr.R.Prabhakaran, learned counsel appearing for the appellants would submit that the payment of wages under Section 17(B) of the Industrial Disputes Act pending a Writ Petition or an appeal or a proceeding before the Hon'ble Supreme Court is in the nature of subsistence allowance and unless it is shown that the employee is not gainfully employed, he will not be entitled to claim wages under 17(B).

11. We have considered the rival submission. The fact that the workmen are employed is not in dispute, at the same time, it is also been demonstrated that they are not drawing the same wages as they were paid when they were employed with the appellant Management. Insofar as Section 17(B) is concerned, the object is to see that the employees who have been favoured with an order of reinstatement are not kept at bay by the Management without payment of salary under the pretext of pending

challenge. It is also been made clear by the Hon'ble Supreme Court that 17(B) wages should be paid if it is shown that the workmen are not gainfully employed. Though it is claimed by the employer and admitted by the employees that they are employed in other organizations, it is clear from the materials produced that they are not gainfully employed. The salary drawn by them as of today is much lower than the salary that would have been drawn by them if they had continued in service with the appellant Management.

12. We are therefore of the considered opinion that the equities should be worked out by directing the appellant Management to pay a consolidated sum of Rs.15,000/- for each employee during the pendency of the Writ Petition.

13. In view of the foregoing reasons the Writ Appeals in W.A.Nos.1190, 1191 of 2017 are partly allowed. The order of the learned Single Judge directing payment of wages under Section 17 (B) will stand modified with a direction to the appellant Management to pay Rs.15,000/- per month for each of the employees viz., 1<sup>st</sup> respondent in W.A.No.1190 and 1191 of 2017 respectively from the date of the filing of the Writ Petitions till their disposal. The arrears is to be paid within a period of four weeks from the date of receipt of a copy of the order. W.A.No.1189 of 2017 will stand allowed setting aside the order made in W.M.P.No.24417 of 2016 in W.P.No.13788 of 2016. In the circumstances of the case we do not make any order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dsa  
To  
The Presiding Officer,  
The Central Government Industrial  
Tribunal cum Labour Court,  
Shastri Bhawan,  
Haddows Road, Chennai - 600 006.

+3cc to Mr.R.Prabakaran, Advocate SR.NO.57056 to 57058  
+1cc to Mr.Balan Haridas, Advocate SR.NO.57109

RV(CO)  
sm:19.9.2018

W.A.Nos.1189 to 1191 of 2017