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

% *Date of Judgment: 18th July, 2018*

+ LPA 378/2018
MAHADESH Appellant

Through Mr. Atul T.N., Advocate

versus

AIRPORT AUTHORITY OF INDIA Respondent

Through Mr. Digvijay Rai and Mr. Kushtubh
Singh, Advocates

+ LPA 379/2018
V VARDHARAJAN Appellant

Through Mr. Atul T.N., Advocate

versus

AIRPORT AUTHORITY OF INDIA Respondent

Through Mr. Digvijay Rai and Mr. Kushtubh
Singh, Advocates

+ LPA 380/2018
CHINNA SAWMY Appellant

Through Mr. Atul T.N., Advocate

versus

AIRPORT AUTHORITY OF INDIA Respondent

Through Mr. Digvijay Rai and Mr. Kushtubh
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM. APPL.27931/2018(Exemption) in LPA 378/2018
CM. APPL.27968/2018(Exemption) in LPA 379/2018
CM. APPL.27973/2018(Exemption) in LPA 380/2018

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.

CM.APPL 27930/2018(direction) in LPA 378/2018
CM.APPL 27967/2018(direction) in LPA 379/2018
CM.APPL 27972/2018(direction) in LPA 380/2018

3. The applications are dismissed as not pressed.

CM.APPL 27929/2018(delay) in LPA 378/2018
CM.APPL 27966/2018(delay) in LPA 379/2018
CM.APPL 27971/2018(delay) in LPA 380/2018

4. These are applications filed by the applicants/appellants/workmen seeking condonation of 137 days delay in filing the present appeals.
5. Notice. Counsel for the respondents accepts notice. The prayers made in these applications are opposed.
6. Learned counsel for the appellants submits that having regard to the financial status of the appellants, who are a jobless workmen, the delay in filing the appeals be condoned.
7. We have heard the learned counsels for the parties. The explanation rendered, in our view, is justifiable. Accordingly, the delay in filing the present appeals is condoned.
8. The applications stand disposed of.

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LPA 380/2018

9. Partly aggrieved by the order dated 18.01.2018 passed by the learned Single Judge of this Court has led to the filing of the present appeals.

The respondents herein had filed writ petitions laying challenge to the Award dated 05.10.2007 passed by the Presiding Officer, Central Government Industrial Tribunal-cum- Labour Court-II (hereinafter referred to for short as the 'Tribunal'). By the impugned Award, the Tribunal had directed reinstatement of the appellants (hereinafter referred to as the 'workmen') w.e.f. 06.12.1996 along with 25% back wages and cost of Rs.25,000/-. During the pendency of the writ petitions, the workmen filed applications under Section 17B of the Industrial Disputes Act, 1947(hereinafter referred to as the 'Act'). The aforesaid applications were allowed and the respondents were directed to pay the workmen back wages at such rate during the pendency of these proceedings on or before 10th of each succeeding English calendar month starting from February, 2018.

10. The workmen/appellants herein are aggrieved by the fact that the learned Single Judge did not clarify that the workmen would be entitled to wages equivalent to the last drawn or minimum wages, whichever is higher. Learned counsel submits that this ground was raised before the learned Single Judge, however, it seems that the same escaped the attention of the learned Single Judge. Learned counsel for the appellants contends that in identical matter between the workmen and the respondent Airport Authority of India, the same learned Single Judge in W.P.(C).2619/2008 (in CMs.APPL 8881/2015 & 380/2016 under Section 17B of the Act) had while allowing the applications, directed the Airport Authority of India to pay wages equivalent to the last drawn or minimum wages, whichever is higher from the date of filing of their respective applications.

11. Notice to show cause as to why the appeals be not admitted. Learned counsel for the respondents accepts notice.
12. It is contended by the learned counsel for the respondents that reading of the order passed by the learned Single Judge would show that the respondents had opposed the applications filed by the applicants/workmen under Section 17B of the Act. Counsel reiterates that it is not probable that a daily wager earning Rs.300/- per day would be sitting idle and not earning during his unemployment to look after himself and his family. Counsel submits that this aspect would have prevailed upon the learned Single Judge in not allowing the minimum wages and only restricting the claim of the appellants/workmen to the last drawn wages.
13. We have heard the learned counsels for the parties.
14. A short issue which arises for consideration is as to whether while deciding the applications under Section 17B of the Act, the workmen is entitled to the wages last drawn by him or is the Court empowered to grant an amount which is higher than the last drawn wages. This question was a subject-matter of a Full Bench of this Court in the case of *Delhi Development Authority v. Smt. Omvati & Ors.* (LPA No.84/2002) and other connected matters decided on 24.05.2006. The Full Bench of this Court relied upon the decisions in the case of *Dena Bank v. Kirtik Kumar T.Patel*, reported at (1999) 2 SCC 106 and *Dena Bank v. Ghanshyam*, reported at (2001) 5 SCC 169, which took note of the earlier judgment of the *Dena Bank* and referred to the same in the subsequent judgment as well. Relevant portions of the Full Bench judgment of this Court dated 24.05.2006, read as under:

- “6. Supreme Court held that the first construction gives to the expression '*full wages last drawn*', its plain and literal meaning. The second as well as third construction read something more than their plain and literal meaning. It was held that the second and third construction would mean reading the expression '*full wages last drawn*' as '*full wages which would have been drawn*'. It was held that such an extended meaning to the words '*full wages last drawn*' does not find support in the language of Section 17-B of the I.D.Act 1947. It was further held that extended meaning cannot be read even on the basis of object underlying the enactment of Section 17-B.
7. While drawing the curtains down on the discussion in Dena Bank-1, in para 23 the Supreme Court observed as under:-

“23. 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 manner preclude the High Court or the Supreme Court to pass an 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 dehors the provisions contained in Section 17-B and while giving the direction, the court may also give the 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. 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.” (Underline emphasised)

8. Lawyers being lawyers, sentences are picked up, they are turned and twisted. Not only meanings of words are sought to be expanded or constricted, even meaning of meaning is attempted to be defined. Jugglery of the words and syntactical jugglery required the Supreme Court to revisit the subject in Dena Bank-2. Matter reached the Supreme Court inasmuch as the High Court directed payment of regular wages to the workman pending adjudication of the writ petition filed by the management questioning the award, which had set aside the dismissal and directed reinstatement of the workman. Taking note of Dena Bank-1 and the legal position that Section 17-B of the I.D. Act did not preclude the High Court, exercising power under Article 226 of the Constitution, from passing appropriate interlocutory orders, having regard to the facts and circumstances of each case, the Supreme Court considered whether, while exercising power to award a sum to the workman during pendency of the writ proceedings, higher than the last drawn wages what arrangement needs to be worked out.

9. In para 13 the Supreme Court held as under:-

“13. It must, however, be pointed out that while passing an interlocutory order the interests of the employer should not be lost sight of. Even though the amount paid by the employer under Section 17-B to the workman cannot be directed to be refunded in the event he loses the case in the writ petition, [See : Dena Bank's case (supra)] any amount over and above the sum payable under the said provision, has to be refunded by him. It will, therefore, be in the interests of justice to ensure if the facts of the case so justify, that payment of any amounts over and above the amount payable under Section 17-B to him is ordered to be

paid on such terms and conditions as would enable the employer to recover the same.” (Underline emphasised)

10. Since rival contentions centered around the afore-noted observations of the Supreme Court in Dena Bank-1 and Dena Bank-2 we restrict ourselves, while answering the reference, to the legal position as is required to be culled out from the aforesaid observations of the Supreme Court.
11. xxx xxx xxx xxx xxx
12. Wages can be broadly divided into 3 broad categories. Firstly, would be the basic minimum wage i.e. the bare subsistence wage. Above it would be the fair wage and beyond that would be the living wage. The concept of these 3 wages cannot be described in definite words because their content is bound to vary from time to time and from country to country. Ethical and social considerations as also the political philosophy of a statue would determine what concept of wage needs to be adopted. In a welfare state, state of national economy and the requirement of workman living in a civilized and progressive society may require appropriate adjustments to be made while defining what would be the sum to be paid as 'wage'. Indeed, as observed in the report published as AIR 1961 SC 895, The Standard Vacuum Refining Company Vs. Its Workman, in an under developed country it would be ideal to describe any wage structure.
13. But, socio-economic aspect of wage structure has been adopted in this country with the promulgation of the Industrial Disputes Act 1947. The Act postulates that no employer can engage industrial labour unless he pays the labour a minimum basic wage and if he cannot pay such a wage he has no right or justification for carrying on the business. The Act aims to assure to every workman engaged in an industry a fair wage and not a wage determined on the principle of supply and demand

inasmuch as the legislature was aware of large scale unemployment in this country.

14. The Supreme Court in its decision in Dena Bank-1 and Dena Bank-2 kept alive this basic philosophy inasmuch as the 2 decisions recognised the power of a Writ Court to award meaningful payment to a workman during pendency of a writ proceedings more than the last drawn wages. The reason is obvious. There may be mismatch between the cost of minimum living when the matter reaches the High Court and the last drawn wages.
15. Having recognised the said right, conscious of the fact that anything received by the workman over and above the last drawn wages was to be refunded if the management succeeded before the High Court, the Supreme Court lodged a caveat.
16. It is this caveat which was debated at the Bar between learned Counsel for the parties. Whereas Shri Jagmohan Sabharwal, learned senior counsel for the appellants and Shri R.R.Sahay and Shri Vinay Sabharwal, Advocates urged that the caveat meant that the court shall secure adequate means of restitution to the management by directing security to be furnished by the workman. Shri Sanjoy Ghose, learned counsel for the workman urged to the contrary and stated that Supreme Court did not mandate a security to be furnished, in fact discretion under Article 226 was left wide open, of course to be exercised in a fair, just and equitable manner depending upon the facts of each case.
17. Unguided discretion is an anathema to law and therefore courts have always carved out intricate principles on which discretion is exercised by courts. The web of administrative law created by courts is a living example of how courts have crafted the principles on which discretion has to be exercised by the executive. Principles of uberrimae fides, suppressio veri, suggestio falsi, delay and laches etc. have been evolved by courts to regulate

discretionary exercise of power under Article 226 of the Constitution of India. However, the signature tune is the cause of advancing justice.

18. Any interpretation to a statute be it adopting the literal approach, the grammatical approach, purposive approach, the mischief rule approach etc. must take into account the cause of justice especially where the statute or exercise of power by the court relates to a welfare measure.
19. The underlined portion in para 23 of the decision in Dena Bank-1 evidences that the Supreme Court consciously used the word '*may*'. Their Lordships have made it abundantly clear that while directing payment of an amount over and above wages last drawn, the court may also give directions regarding refund or recovery in the event of the award being set aside. The expression used is not '*shall also give directions*'.
20. In Dena Bank-2, while recognising that the interest of the employer should not be lost sight of as the amount over and above the last drawn wages has to be refunded in the event of award being set aside, their Lordships of the Supreme Court did not mandate that in all such cases the excess amount has to be secured by and under a security. The expression used by their Lordships in the next qualifying sentence is '*if the facts of the case so justify*'.
21. As sought to be urged by Shri Jagmohan Sabharwal, learned senior counsel for the management, the sentence 'it will, therefore be in the interests of justice to ensure if the facts of the case so justify, that payment of any amount over and above the amount payable under Section 17-B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same' would have to read minus the expression '*if the facts of the case so justify*'. The sentence would have to be read as under:-

“It will, therefore be in the interests of justice to ensure that payment of any amount over and above the amount payable under Section 17-B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same.”

22. There is good reason not to fetter the jurisdiction, much less its exercise by hedging the same with mandatory requirements. Delay in resolution of labour disputes before Labour Courts are legendary. Many a time references to labour courts are preceded by a litigation against appropriate authority which does not make the reference when demanded by a workman or the union. Numerous circumstances where awards have been published after more than 15 to 20 years after reference are to be found in the various judicial pronouncements.
23. The last drawn monthly wages of a workman may be Rs.300/- per month. This workman who has litigated for 15 to 20 years and has succeeded, on being awarded current minimum wages during pendency of the challenge by the management to the award, if directed to secure the management by offering a tangible security for restitution if the award is set aside, if we may say with respect would get an illusory relief, for what can such workman to offer by way of a tangible security. Such a direction if passed would defeat the very purpose of the order.
24. We accordingly answer the reference by holding that while awarding a monthly sum more than the last drawn wages to be paid to a workman during the pendency of the writ proceedings challenging an award it is not mandatory to direct the workman to offer a tangible security for restitution to the management in case the award is set aside. It would be open to the Court to pass appropriate orders depending upon the facts of each case as to in what form restitution has to be secured. If workman has no tangible security to offer a personal bond would do.

25. The appeals may be placed before appropriate Bench as per roster for decision on merits.”
15. The Full Bench has dealt with the issue in detail and held that the legislative enactment could not have impinged upon the constitutional powers of the Courts under Article 226 of the Constitution of India. Accordingly, we modify the impugned order dated 18.01.2018 of the learned Single Judge. While upholding the applications under Section 17B of the Act, the respondents are directed to pay to the workmen/appellants the wages equivalent to last drawn or minimum wages, whichever is higher. All other conditions would remain unchanged.
16. The appeals stand disposed of.
17. Learned counsel for the respondents submits that since the matter pertains to the year 2008, he would file an application before the learned Single Judge for an early hearing. Learned counsel for the appellants submits that as and when the matter is taken up, he would not oppose the application.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JULY 18, 2018

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