

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 12 OF 2016
IN
LETTERS PATENT APPEAL NO. 303 OF 2010
IN
WRIT PETITION NO. 1178 OF 1996

The Indian Hotels Company Ltd .. Applicant

Versus

Namdeo v. Sanas .. Respondent

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- Mr. Navroj Jalota a/w Mr. Pinkesh Shah i/by Mulla & Mulla & Craigie Blunt & Caroe for the Applicant
 - Ms. Karuna Yadav for the Respondent
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : SEPTEMBER 5, 2019.

P.C.:

1. This application is taken out by the appellant - employer with a prayer to modify an order dated 23.9.2015 as modified by order dated 26.10.2015 on notes for speaking to the minutes. The appellant has challenged the judgment of the learned Single Judge providing for reinstatement of the respondent - workman. The LPA has been admitted. The Division Bench in Civil Application No. 235 of 2012 passed an order on 23.9.2015 which provided for the employer to pay

the minimum wages prevailing at that time i.e at the rate of Rs. 8628/- (rounded off at Rs. 8600/-) per month from the date of filing of the application till further orders. This was done in exercise of powers under Section 17-B of the Industrial Disputes Act, 1947 ("**The Act**" for short). This order was subjected to minor corrections on the note for speaking to the minutes which was disposed of on 26.10.2015. It is not necessary for us to refer to these changes.

2. In this application, the employer points out that the respondent-employee has crossed the age of superannuation on 16.3.2016 and as per the policy of the employer, he would have superannuated at the end of the month i.e 31.3.2016. The case of the applicant - employer therefore is that post such superannuation, the workman cannot claim wages under Section 17-B of the Act. It is stated that on account of the orders passed by this Court, the employer had to continue to pay the same till now. It is in this background that the above noted prayer has been made.

3. Learned counsel for the applicant submitted that once the employee crosses the age of superannuation, he cannot claim benefit of wages under Section 17-B of the Act. He relied on certain decisions which we would refer to later.

4. On the other hand, learned counsel for the workman opposed this application contending that in plain terms, the benefit of Section 17-B of the Act would continue to flow in favour of the workman as long as, the appellate proceedings continue. She submitted that the fact that the workman has crossed the age of superannuation, would be of no consequence. She relied on the decision of learned Single Judge of Delhi High Court in case of **Management of Centaur Hotel Vs. P.S. Mohan Nair & Anr.**¹

5. Having thus heard, the learned counsel for the parties and having perused the documents on record, we are of the opinion that the workman cannot continue to get the benefit of Section 17-B of the Act. It is an admitted fact that long back, he crossed the age of superannuation. Section 17-B of the Act provides that where in any case, a Labour Court,

¹ 2012-I-LLJ-89 (Del)

Tribunal of National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman has been filed to that effect in such Court. In plain terms, the benefit of Section 17-B of the Act is made available to the workman who has earned the verdict of reinstatement at the hands of the Labour Court or the Industrial Court and the employer has challenged such award before the High Court or the Supreme Court. In view of the reinstatement, in order to sustain the workman pending such proceedings, the statute mandates that the employer shall pay the last wages drawn inclusive of the maintenance allowance permissible under the rules. It is always open for the employer even pending the proceedings before the High Court or the Supreme Court, to reinstate the

workman subject to outcome of such proceedings, extract work from him, pay full current wages and avoid liability of paying in idle wages at the rate of last drawn salary. It would also be open for the High Court or the Supreme Court while entertaining such a petition at the hands of the employer to refuse to stay the direction for reinstatement in which case the employer would be obliged to carry out such directions subject to outcome of the proceedings. Under these circumstances, it would be incongruent to expect the workman to go on paying the last drawn wages to the workman in terms of Section 17-B of the Act even after he crossed the age of superannuation.

6. The learned Single Judge of this Court in case of **Hind Rectifiers Ltd Vs. Presiding Officer, 1st Labour Court, Bombay & Anr.**² has taken such a view with which we are in respectful agreement. Relevant portion of this judgment reads as under:-

“12. Even so, what is to be paid to the employee under the provisions of Section 17-B is only the wages which he is entitled to and also for the period for which he is entitled to. So far as the extent

² 2000(4) Mh.L.J. 622

of wages are concerned, they are clarified in the provisions themselves by mentioning that he should be paid full wages last drawn by him at the time of termination of service. It is not disputed at the bar that the services of the respondent employee are governed by the conditions of service. It is also not disputed that the conditions of service prescribe the age of superannuation as 60. If this is so, even in normal course and where there is no litigation the employee could have continued or is entitled to continue in service only upto the age of superannuation. Therefore, the basic right of the employee is to continue in service till the age of superannuation only and not beyond that. Thus, even if under the order passed by the Labour Court, Tribunal or the National Tribunal, for that matter, for reinstatement of the employee and that had been given effect to, that would entitle the employee to continue in service only upto the age of superannuation and not beyond that. These things having been clear, it is impossible to imagine a situation like one in hand where the employee can continue to get the benefit of full wages by taking recourse to Section 17-B of the Act beyond the age of superannuation. I have no hesitation to note that the provisions of Section 17-B of the Act are subject to the conditions of employment and they do not cross the limit laid down by the conditions of service. The employee cannot claim anything which he cannot get under the terms of employment and no such order could also be passed in his favour. The provisions of Section 17-B although speak about the payment of full wages during the pendency of the proceedings in the High Court or the Supreme Court, that right is always subject to the basic which the employee enjoys under the conditions of service i.e. the age of superannuation.

13. This is further clear from the definition of "wages" given in clause (rr) of Section 2 of the I. D. Act. The definition is as under :-

"Wages" means all remuneration capable of being expressed

in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment and includes -....."

Thus, under Section 17-B of the I.D. Act employee is entitled to receive his full wages last drawn by him. That means, he is entitled to wages and nothing more. Wages which he is entitled to are as per the terms of employment as has been mentioned in the aforesaid definition of wages. So, the employee is entitled to wages as per the terms of employment and the terms of employment in the present case were that he is entitled to wages till he attains the age of superannuation and not beyond that."

The learned Judge in the said case has referred to a decision of the Madras High Court in case of **Varadaraja Textiles (P) Ltd Vs. Labour Court**³.

7. We are not in agreement with the view of the learned Single Judge in case of Management of Centaur Hotel (supra). In any case, as correctly pointed out by the learned counsel for the management, Delhi High Court Division Bench has already set aside such judgment in an order dated 26.9.2011 in LPA No. 665/2011. This is referred to in another decision of the same High Court rendered by learned Single Judge in case of **Delhi Transport Corporation Vs. Prem**

³ 1999 I CLR 631

Singh & Ors.⁴. This decision of the learned Single Judge referred to and relied upon on the two decisions of the Division Bench of the same High Court in case of Delhi Transport Corporation Vs. Ramesh Chand decided on 11.5.2012 in LPA No. 89/2012 and in case of Press Trust of India Vs. Saraswati in LPA No. 530/2012 decided on 11.12.2012.

8. Under these circumstances, by allowing this Civil Application, we modify the order dated 23.9.2015 passed in Civil Application No. 235 of 2012 deleting the directions to the employer to pay wages in terms of Section 17-B of the Act.

9. Civil Application is accordingly disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]

⁴ 2014 III CLR 692