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

+ **LPA 233/2018**

VIMAL KUMAR MEHTA Appellant
Through: Mr.G.S.Charya, Advocate

versus

M/S ENGINEERS INDIA LTD Respondent
Through: Mr. Raj Birbal, Sr. Advocate with
Ms. Raavi Birbal, Advocate

+ **LPA 521/2018**

M/S ENGINEERS INDIA LTD Appellant
Through: Mr.Raj Birbal, Sr.Advocate with
Ms. Raavi Birbal, Advocate

versus

VIMAL KUMAR MEHTA Respondent
Through: Mr. G.S.Charya, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
22.01.2019

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CM Appl.No. 36681/2018 (delay) in LPA No. 521/2018

1. There is a delay of 120 days in filing the present appeal by the Engineers India Limited (EIL) against the order dated 5th March, 2018 passed by the learned Single Judge disposing of its Writ Petition (C) No. 17858/2004.
2. By the said impugned order, the learned Single Judge has come to the

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following conclusions:-

“76. In the circumstances, I deem it appropriate to dispose of the present writ petition in the following terms:

(i) The decision to strike the name of the respondent off the rolls of the petitioner, as communicated to the respondent vide letter dated 11th October 1991, is declared as illegal, and is accordingly quashed.

(ii) The impugned Award, dated 24th July 2004, passed by the Labour Court, is modified by directing the petitioner to pay, to the respondent, 30% of the wages which he would have drawn, had he continued till superannuation. This would be over and above the amount paid, by the petitioner, to the respondent, pursuant to orders of this court, under Section 17-B of the Industrial Disputes Act, 1947, or otherwise, which, needless to say, would not be recovered or adjusted in the payment so directed. Payment, as so directed, shall be made, by the petitioner to the respondent, within a period of 8 weeks from the date of receipt, by the petitioner, of a certified copy of this judgment.”

3. It must be noticed at this stage that as far as the workman (Respondent in LPA 521/2018) is concerned, his appeal being LPA 233/2018 came up for hearing on 25th April, 2018. EIL was represented by its counsel on that day itself and accepted notice in the said appeal. More than three months thereafter, EIL filed LPA 521 of 2018 on 8th August, 2018. In other words despite appearing in the appeal of the workman, i.e. LPA 233 of 2018 on 25th April 2018 itself, EIL did not consider it necessary even at that stage to file an appeal.

4. The explanation offered in the application for condonation of delay is that the Manager who was handling the cases had left the management on 28th June, 2018 which was more than three months after the impugned judgment of the learned Single Judge dated 5th March, 2018 and two months after the

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appeal of the workman had already been listed for hearing. Therefore, this explanation is totally unconvincing and is unacceptable.

5. As a last ditch effort, Ms. Birbal stated that she will file a better affidavit to explain the delay. The Court is not persuaded to grant this indulgence in the facts and circumstances of the case outlined hereinbefore.

6. Consequently, the Court is not convinced that a satisfactory explanation has been offered by EIL for the inordinate delay of 120 days in filing LPA 521 of 2018.

7. The application is dismissed.

LPA 521/2018 CM Appl.No. 36680/2018

8. In view of the dismissal of the application for condonation of delay, the appeal and application for stay are dismissed.

CM 54567/2018 in LPA 521 of 2018

9. This is an application by the workman questioning the basis on which EIL has, after the previous hearing, paid him the amount purportedly due in terms of the judgment of the learned Single Judge. Since the main appeal i.e. LPA 521 of 2018 has been dismissed, this application does not survive. Nevertheless, the grievance of the Respondent workman regarding the basis on which the payment was made to him is separately addressed. The application is disposed of.

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LPA No 233/2018

10. The workman has filed this appeal, aggrieved by the order of the learned Single Judge to the extent that it has been directed that the workman would be entitled to only 30% of the wages which he would have drawn had he continued till superannuation.

11. The reasons given by the learned Single Judge for the above directions is found in para 74 of the impugned judgment which reads as under:

“74. The period for which the respondent remained absent from duty, without any sanctioned leave was, however, considerable, and the respondent cannot seek to evade all responsibility therefor. On the flip side, it cannot be gainsaid that the present writ petition has remained pending since 2004, and the order striking the name of the respondent off the rolls of the petitioner-company dates back a further eleven years. A quarter of a century has, therefore, elapsed, since the petitioner and respondent parted ways. Following the course of action adopted by the Constitution Bench of the Supreme Court as far back as in *Buckingham & Carnatic Co. Ltd (supra)*, and by the Division Bench of this Court in *Hindustan Times Ltd (supra)*, I, therefore, deem it proper to accord a quietus to the controversy, by directing an appropriate lump sum compensation, to be paid to the respondent-workman - a course of action which was also advocated by Ms. Birbal, though, needless to state, by way of demurrer.”

12. The Court further notes that the aforementioned payment is over and above the amount paid during the pendency of the writ petition in the High Court in terms of the orders passed in the application under Section 17B of the Industrial Disputes Act, 1947 ('ID Act') which was directed not to be recovered or adjusted against the payment directed to be paid. The Court further notes that the payment was directed to be made within a period of eight weeks.

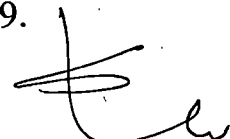
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13. Pursuant thereto admittedly the Respondents have made the payment of Rs. 25 lacs less TDS to the Appellant is Rs. 25,80,210 (Rs.20,59,205 plus TDS of Rs.4,96,817). It is further stated that apart from the above Rs. 13,56,146/- was paid under Section 17B of the ID Act.

14. Having heard learned counsel for the parties, and in the above circumstances, the Court is not inclined to interfere with the impugned order of the learned Single Judge, even at the instance of the workman. LPA 233 of 2018 is accordingly dismissed.

15. At this stage, counsel for the Appellant workman contests the calculation of the sum of Rs.25,80,210 a copy of which has been provided by counsel for the EIL to him. Counsel for the Appellant is permitted to file an affidavit within four weeks pointing out why the above calculation is erroneous.

16. For the above limited purpose, list on 6th March, 2019.


S. MURALIDHAR, J.


SANJEEV NARULA, J.

JANUARY 22, 2019

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