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

Date of Decision:- 29.01.2019

+ **W.P.(C) No.5720/2015**

M/S BRITISH AIRWAYS

..... Petitioner

Through Mr.Sandeep Prabhakar with Mr.Amit
Kumar, Mr.Vikas Mehta, Advs.

Versus

UNION OF INDIA & ANR

..... Respondent

Through Mr.Shiva Lakshmi, CGSC for R-1.
Mr.Uttam Datt, Adv for R-2.
Respondent no.2 in person.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM APPL. 8171/2016 (u/s 17 B of the ID Act)

1. Vide the present application u/s 17 B of the Industrial Disputes Act, 1947 (hereinafter referred to as "Act") the respondent no.2/applicant seeks a direction to the petitioner to pay her the wages last drawn by her, including yearly increments, dearness allowance and revision of pay, from the date of her termination. However, the learned counsel for the applicant states that keeping in view the ambit of section 17 B of the Act, he is restricting the prayer in the application to a direction to the petitioner to pay the applicant her last

drawn wages from the date of passing of the impugned award holding that the her termination by the petitioner was illegal.

2. The present writ petition has been filed by the petitioner impugning the award dated 30.01.2015, whereunder the learned Labour Court after considering the pleadings of the parties and the evidence laid before it, came to a conclusion that the applicant had been illegally terminated and was, therefore, was entitled to be reinstated with full back wages.

3. Upon notice being issued in the present petition, this Court had vide its order dated 28.05.2015, directed the petitioner to deposit 75 % of the amount awarded by the learned Labour Court with the Registrar General of this Court in the form of a FDR, which order has been duly complied with by the petitioner.

4. Mr. Uttam Datt, learned counsel for the respondent no.2/applicant states that the applicant has remained unemployed from the date of her termination, except for two brief contractual appointments in 2004 and 2012. However the applicant had not been able to get any gainful employment after her termination and has no other source of income or livelihood, and she is suffering not only from ill-health but also from grave financial hardship on account of loss of her employment.

5. Mr.Datt further states that the applicant was always willing to rejoin her duties on the same post from which she had been terminated, in accordance with the impugned award, but the petitioner's management was adamant in not taking her back on the same post and has been insisting that the applicant join duties at the

Airport on a different post that is neither commensurate with her health nor her qualifications. In these circumstances, the respondent cannot be faulted for not accepting the petitioner's offer of alternative employment.

6. A reply to the present application has been filed by the petitioner, but the same contains no material averments except for reiterating that once the petitioner had offered an alternative job to the applicant, she should have joined the same and as she had not accepted the said job offer, she cannot claim the benefit of Section 17 B of the Act.

7. In support of his contention that the applicant cannot be granted the benefit of section 17 B of the Act once she had refused to join the alternative employment being offered by the petitioner as it was evident that she was wilfully not taking up employment so as to get undue advantage from the petitioner by Section 17 B of the Act. Mr. Sandeep Prabhakar, learned counsel for the petitioner relies on the decision of the Supreme Court in the case of ***Rajasthan Gramin Bank v. Bishan lal Bairwa*** [AIR 2010 SC 1789].

8. Mr. Prabhakar also relies on a decision of this Court in ***M/S Birdhi Chand Naunag Ram Jain v. P.O., Labour Court No. IV & Ors.*** [109 (2004) Delhi Law Times 1] to contend that once the writ petition was filed in May, 2015, the very fact that the present application was filed only in March, 2016 and that to without any explanation for the delay in approaching the Court, clearly shows that the applicant was perhaps employed and, therefore, not entitled to be granted any benefit u/s 17 B of the Act for the period prior to March,

2016.

9. Lastly, Mr.Prabhakar relies on a decision of the Gujarat High Court in the case of *Devubhai T Patel C/O Azadsingh J Pariha v. Saurashtra Paints Limited* [2015 Law Suit(Guj) 887] to contend that once the petitioner had offered an alternative posting to the applicant, her refusal to perform these duties itself was sufficient to disentitle her from the grant of benefit u/s 17 B of the Act.

10. I have carefully considered the submissions of the learned counsel for the parties and perused the record. What emerges from the admitted facts on record is that the petitioner has in its reply has merely denied the petitioner's averment that she has remained unemployed from the date on which the Impugned Award was passed. In view of the petitioner's bald denial, the assertion of the learned counsel for the applicant that the applicant has remained unemployed after 30.01.2015, from which date she is seeking benefit u/s 17 B of the Act, remains unrebutted.

11. Even though Mr. Prabhakar had made an attempt to argue that the applicant was employed in India For Safe Food and Alliance for Sustainable & Holistic Agriculture (ASHA), learned counsel for the applicant on specific instructions from the applicant who is present in Court, denied the said assertion and stated that she was never employed with the aforesaid two concerns and had only been doing some voluntary work in those organisations for which she had not received any remuneration.

12. Now coming to the decisions relied upon by the learned counsel for the petitioner. In so far as the first decision in the case of

Rajasthan Gramin Bank (supra) is concerned, the same is not at all applicable to the facts of the present case as in the said case the Supreme Court had remanded the matter back to the concerned High Court after finding that while allowing the application u/s 17 B of the Act, it had ignored the reply of the management clearly stating that the workman was employed in two different companies for different periods during the period for which he was claiming the benefit under Section 17 B.

13. In so far as the decision in the case of ***M/S Birdhi Chand Naunag Ram Jain*** (supra) is concerned, the same also not applicable to the facts of the present case as in the said case, there was a delay of over two years in approaching the Court by way of an application u/s 17 B of the Act, whereas in the present case admittedly the writ petition was filed in March, 2015 and the present application has been filed on 01.03.2016. Accordingly, keeping in view the fact that it is the applicant's case that she has been suffering from ill-health, in my considered view the said delay could not be treated as inordinate delay.

14. As regards the decision in the case of ***Devubhai T Patel C/O Azadsingh J Pariha*** (supra), in my opinion the said decision is also not applicable to the facts of the present case as in the said case, the High Court was not dealing with a case wherein the workman was asked to join alternative employment, but was being asked to rejoin duties at the same post from which he was terminated.

15. I am of the view that though there is merit in the contentions of the learned counsel for the petitioner that, in case a workman refuses

to rejoin his duties, he cannot claim the benefit u/s 17 B of the Act, in the facts of the present case, I am unable to persuade myself to reject the applicant's claim for grant of benefit of Section 17 B on account of her refusal to join duties offered by the petitioner at the Airport. Once there is a finding of the learned Labour Court that the said job offer cannot be treated as commensurate with the applicant's qualification and health, I do not see the refusal of the applicant to join such duties as a reason to debar her from availing the benefit of Section 17 B of the Act.

16. For the aforesaid reasons, once there is nothing before this Court to show that the applicant was ever gainfully employed after the passing of the impugned award and the petitioner itself is not willing to re-instate her on the job from which she was terminated, I have no hesitation in holding that the applicant fulfils all the conditions for grant of benefit of section 17 B of the Act. Therefore, the application is allowed and the petitioner is directed to pay the applicant her last drawn wages from the date of the impugned award, i.e., 30.01.2015. The petitioner shall also pay the arrears of the last drawn wages within four weeks and will continue to pay to the applicant the last drawn wages as directed hereinabove on or before 7th day of each month.

17. The application is disposed of in the above terms.

W.P.(C) 5720/2015

1. On the last date, after hearing arguments of both sides, the matter was adjourned to enable the parties to explore the possibility of a settlement. Today, learned counsel for the parties state that a

settlement is not possible. In these circumstances, list the present petition for disposal on 01.02.2019.

(REKHA PALLI)
JUDGE

JANUARY 29, 2019/sr

