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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.119 OF 2019

IN

WRIT PETITION NO.3097 OF 2018

Narayan P. Bhandari

...Applicant

IN THE MATTER OF

Manisha Analytical Lab Pvt. Ltd.

...Petitioner

vs

Narayan P. Bhandari And Anr.

...Respondents

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Mr. S.N. Deshpande, a/w. Ms. Swarna P. Munshi, for the Applicant/original Respondent.

Mr. Shafi Kazi, a/w. Ms. Pallavi Kamath, i/b. BJ Law Offices LLP, for the Respondent/Original Petitioner.

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CORAM : S.C. GUPTE, J.

DATED: 13 JANUARY, 2020

P.C.:

. Heard learned Counsel for the parties. This notice of motion is an application under Section 17B of the Industrial Disputes Act, 1947 ("Act") for payment of wages to the Applicant workman (original respondent) pending the present writ petition.

2. The present writ petition challenges an award passed by the Labour Court at Mumbai in a reference made to it. The subject matter of

the reference was termination of the Applicant herein. The Labour Court, by its award dated 13 March 2018, answered the reference partly in the affirmative by declaring the termination of the second party (the Applicant herein) as illegal and without following due process of law and directed the Respondent herein (original first party) to reinstate the Applicant in his original post along with continuity of service within one month and to pay 50% back wages to him from the date of his dismissal and till his reinstatement. This award has been challenged in the present writ petition by the first party establishment. The Applicant herein is, in the premises, entitled to wages pending proceedings under Section 17B of the Act.

3. There is no case here that the Applicant workman has either been employed or receiving remuneration during the pendency of the petition. The only ground of objection of the first party establishment is that the Applicant has already superannuated at the age of 58 years. This objection is on the footing of a circular purportedly issued by the first party establishment. The circular produced with the affidavit in sur-rejoinder on behalf of the Respondent to the notice of motion (original first party) is a unilateral declaration. It is neither a settlement nor an agreement or award. Prima facie, therefore, under the applicable standing orders, the Applicant's date of superannuation would be 3 January 2021. There is no reason why he should not be entitled to wages under Section 17B till that date. Learned Counsel for the Respondent to the notice of motion submits that standing orders are not applicable in the case of the Applicant, since he is a managerial personnel and not a workman. This question has already been decided

by the Labour Court in favour of the Respondent-workman. The merits of that decision cannot be questioned in an application under Section 17B.

4. Accordingly, it is ordered that between the date of this petition and 3 January 2021, the Applicant shall be entitled to full wages in accordance with Section 17B of Act. The Respondent to the notice of motion is directed to pay such wages till the month ending 31 December 2019 within a period of four weeks from today. The prospective wages for the month of January 2020 onwards shall be paid on or before the 10th day of each following month. It is made clear that the Applicant shall continue to receive wages only upto 3 January 2021. The other prayers in the notice of motion are rejected. The notice of motion is disposed of accordingly.

(S.C. GUPTE, J.)

**Smita
Gonsalves**

Digitally signed by
Smita Gonsalves
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