

Form No. J(2).

Item No.13

Raja/Pallab (A.R. Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 05.12.2022

DELIVERED ON: 05.12.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 668 of 2018

M/s. United Paint Industries.

Vs.

The State of West Bengal & Ors.

Appearance:-

Mr. Abhishek Banerjee

Ms. Parna Roy Choudhury

.....for the appellant

Mr. Pradip Kumar Kundu

.....for the respondent no. 5

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal is directed against the order passed by the learned Single Bench dated 21st April, 2017 in C.A.N. 8934 of 2016 in WP No.13760(W) of 2016. The said application was filed by the respondent/workman under section 17B of the Industrial Disputes Act, 1947 (for short 'the Act'). The learned Single Bench had allowed the application.

Aggrieved by that, the management has filed the present appeal.

2. We have heard Mr. Abhishek Banerjee, learned advocate for the appellant. The short issue, which falls for consideration is whether the respondent/workman was gainfully employed after the order of termination from service was passed by the management.

3. The appellant/management have taken a specific plea in their affidavit-in-opposition filed in the application under section 17B of the Act stating that the respondent/workman is gainfully employed as he has a family business, which stands in his name and he is earning sufficient income, which is more than the last drawn wage drawn by the workman, when he was in employment.

4. From the affidavit-in-reply, we find that the workman has not made a specific denial of such averment. More importantly before the industrial tribunal, this issue was one of the issues, which were framed for consideration, viz., the issue nos. 4 and 5. The learned tribunal has recorded that in the cross-examination of the respondent/workman he has admitted that he used to earn more than Rs. 8,000/- per month from his family transport business. However, he has admitted that the business stands in his name. Thus, the learned tribunal concluded that an admission need not be proved and

consequently the industrial tribunal while directing reinstatement of the workman, denied back wages. Thus, considering these facts, in the absence of any proof to show that the workman was not gainfully employed during the pendency of the writ proceedings, wages under section 17B of the Act could not have been granted.

5. Thus, for the above reasons, the appeal filed by the management is allowed and the order passed by the learned Single Bench dated 21st April, 2017 in C.A.N. 8934 of 2016 in WP No.13760(W) of 2016 is set aside.

6. It is submitted by the learned advocates appearing for the parties that the affidavit-in-opposition has been filed in the writ petition and the writ petition can be listed for hearing.

7. Registry is directed to list the writ petition before the appropriate Bench in the combined monthly list of cases for the month of January, 2023.

8. No costs.

9. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J.)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

