

IN THE HIGH COURT AT CALCUTTA  
In Appeal from its  
CONSTITUTIONAL WRIT JURISDICTION  
CIVIL APPELLATE JURISDICTION

APO No. 526 of 2015  
with  
WPO No. 878 of 2003  
Upendra Choudhury  
Versus  
M/s. J. K. Industries Ltd. & Ors.

APO No. 9 of 2016  
with  
WPO No. 878 of 2003  
Upendra Choudhury  
Versus  
M/s. J. K. Industries Ltd. & Ors.

Before:  
The Hon'ble Justice I. P. MUKERJI  
And  
The Hon'ble Justice SUBHENDU SAMANTA  
Date: 27<sup>th</sup> June 2022

Appearance:  
Mr. Nayan Rakshit Advocate  
for the appellant  
  
Mr. Kushal Chatterjee, Advocate  
Mr. Subhendu Sinha Roy, Advocate  
for respondent no. 1

The Court: On 21<sup>st</sup> November 2002 the Fourth Industrial Tribunal, Kolkata had made an award directing reinstatement of the appellant and for payment of his back wages.

Aggrieved by that award the respondent employer filed a writ application in this court in 2003 (WP No. 878 of 2003). In the said writ the appellant Upendra Choudhury made an application (GA No. 2010 of 2003) under section 17B of the Industrial Disputes Act, 1947 for a direction upon the employer to pay him, during pendency of the above proceeding challenging the award, full back wages last drawn by him.

On 21<sup>st</sup> July 2015 a learned single judge of this court while keeping the section 17B application pending observed that the writ

application filed by the employer should be heard out and refrained from passing any order under section 17B of the said Act.

On 6<sup>th</sup> August 2015 the learned single judge allowed the writ by *inter alia* holding that the appellant was not a workman of the respondent company.

From this judgment and order Upendra Choudhury preferred one of the two instant appeals before a division bench of this court (APO 526 of 2015), which is pending and listed before us.

From the order dated 21<sup>st</sup> July 2015 Upendra Choudhury has preferred the second appeal before us (APO No. 9 of 2016).

As far as this appeal is concerned, the situation is that the judgment and order of the trial court dated 6<sup>th</sup> August 2015 declaring that the appellant was not a workman of the company is still operating.

In those circumstances, the foundation on which the section 17B application is made, that is to say, the existence of the employer-workman relationship is non-existent. If the appellant succeeds in his appeal against the order dated 6<sup>th</sup> August 2015 pending before the division bench, then he shall have a cause of action to maintain the section 17B application. We hold that he does not presently have any cause of action in the application under section 17B of the Industrial Disputes Act, 1947.

We dismiss the appeal (APO No. 9 of 2016).

Nevertheless, we observe that if the appellant is successful in the pending appeal (APO 526 of 2015), he shall have every right to file a section 17B application on the self-same cause of action and seek the self-same relief.

For the ends of justice, we direct that Rs. 3 lakhs representing the wages of the appellant during pendency of the proceedings challenging the award shall be deposited by the respondent company with the learned Registrar General of this Court as early as possible, but not

beyond 29<sup>th</sup> July 2022. The learned Registrar General shall invest the said amount in a term deposit with the Standard Chartered Bank, 6, Church Lane Branch, Kolkata earning the highest rate of interest upon intimation to the parties. He shall furnish a statement of accounts every six months to each of the parties.

The appeal (APO No. 526 of 2015) may be listed before us for hearing on 6<sup>th</sup> July 2022.

(I. P. MUKERJI, J.)

(SUBHENDU SAMANTA, J.)

R. Bose