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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL APPLICATION NO. 820 OF 2016  
IN  
WRIT PETITION NO. 6288 OF 2015**

Mr. Ravindra Sahadu Sonawane .. Applicant

In the matter between

Municipal Corporation of Gr. Mumbai and anr...Petitioners  
VS.

Mr. Ravindra Sahadu Sonawane ..Respondent

Mr. Jaiprakash Sawant, for Applicant/original Respondent.  
Mr. A.V. Bukhari, Senior Counsel a/w Mr. B.V. Bukhari with  
Mr. Santosh Parad, for MCGM.

**CORAM : M. S. KARNIK, J.  
DATE : SEPTEMBER 26, 2022**

**ORAL ORDER:**

1. This is an application by the applicant (hereinafter referred to as 'workman', for short) for payment of wages under the provisions of section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act", for short) with effect from 03/12/2014 during the period of pendency of this writ petition.
2. The Third Labour Court, Mumbai by the impugned award in the Reference (IDA) No. 54 of 2013 between the

employer-the Municipal Corporation of Greater Mumbai (hereinafter referred to as 'MCGM', for short) and the workman granted to him reinstatement with continuity of service with full backwages with effect from 12/08/1991. MCGM aggrieved by the order passed by the Third Labour Court, Mumbai filed the writ petition in this Court. The petition came up for admission on 01/12/2015. By an order dated 01/12/2015, the award of the Labour Court was stayed. The said order reads thus :

"Heard learned counsel for the parties.

2. Arguable questions are raised. Rule. Respondent waives service.

3. On his own showing, the respondent has remained absent from 12 August 1991 onwards and he was terminated as per Rule 19(E) of the Municipal Services Regulations. Reference has been thereafter made in the year 2013 and the reason given by the respondent for absence of intervening period till 2008 is of treatment for mental disorder. Without considering the various issues that arise in such factual situation including the petitioner being a public body, the Labour Court has directed reinstatement with full back wages. Neither the grant of full back wages from the year 1991 nor the reinstatement in service, prima facie are justified. In view of this position, there shall be interim relief in terms of prayer clause (c)."

3. Shri Sawant appearing on behalf of the workman contended that the intention of section 17-B of the said Act

is explicit. He submits that the workman has stated that he is unemployed and he is facing financial difficulty. The civil application filed is duly verified by the workman and the same is on oath. It is further submitted that the date of the award being 03/12/2014, the workman under section 17-B would be entitled for wages from 03/12/2014. Shri Sawant admits that the workman has superannuated with effect from 01/06/2021. The application for wages in terms of section 17-B of the said Act was made on 11/01/2016 by the workman.

4. Learned senior advocate Shri Bukhari for the employer submitted that the workman is not entitled to any wages under section 17-B of the said Act during the pendency of the writ petition. My attention is invited to the averments made in the civil application to contend that except for stating that workman is employed since the date of making an award, such a vague application without any particulars cannot be construed as a sufficient compliance with the provisions of section 17-B of the said Act. To support his submission, learned senior advocate relied upon the

decision of the Division Bench of this Court in the case of **U.P. State Bridge Corporation Ltd. Vs. Maharashtra General Kamgar Union**<sup>1</sup>. My attention is invited to paragraph 19 of the decision to contend that the Division Bench has in clear terms held that the affidavits filed by the workman should be elaborate and definite in its contents. It is observed that the intention of the legislature in terms of section 17-B to provide statutory interim protection is dependent upon the workman not being employed in any establishment and his filing of an affidavit to that effect. It is submitted that the civil application filed by the workman is completely devoid of the requirement contained in section 17-B of the said Act. Mr. Bukhari, learned Senior Advocate then submitted that assuming without admitting the workman is entitled to claim wages under section 17-B of the said Act, then the same can only be from the date of institution of the present writ petition i.e. 08/06/2015 and not from the date as claimed by the workman in the application made under section 17-B. To support this submission, learned senior advocate relied upon the

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1. 2008(4) Mh.L.J. 297

decision of the Division Bench of the High Court of Gujarat dated 05/01/2022<sup>2</sup> in the case of **Hotel Inder Residency Vs. Ambalal Bhairaji Choudhary** and in the case of **Airport Authority of India and anr. Vs. Bharat H. Parmar and ors.**<sup>3</sup> to canvass the proposition that the benefit of section 17-B is to be given during the pendency of the proceedings, which would mean the period between the date of institution of proceedings and the date of the final disposal of the proceedings. Learned senior advocate, however, hastened to add that during the pendency of this writ petition, the workman concerned superannuated on 01/06/2021 and therefore at the highest the benefit of section 17-B can be claimed by the workman only till 01/06/2021.

5. Having heard learned counsel Shri Sawant for the applicant and Shri Bukhari, learned senior counsel for the MCGM, in my opinion, the application made under section 17-B deserves to be allowed for the following reasons:-

6. Section 17-B of the said Act under which the

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<sup>2</sup> Order of the High Court of Gujarat dated 05.01.2022

<sup>3</sup> (2011) 128 FLR 327

application is made reads as under:

**“17-B. Payment of full wages to workman pending proceedings in higher courts.-** Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.”

7. In the present case, the Labour Court has directed the reinstatement of the workman. The employer has preferred the writ petition against the award of the Labour Court on 08/06/2015. The workman concerned has filed the civil application stating on oath that he was unemployed from the date of termination till the date of filing of the application. No doubt, if the employer proves to the satisfaction of this Court that such workman had been employed or had been receiving adequate remuneration

during this period or part thereof, this Court then shall order that no wages shall be payable under section 17-B or such period as the case may be. What has been filed by the applicant is a civil application to claim wages in terms of section 17-B in these proceedings. In paragraph 12, it has been clearly stated that from the date of the termination with effect from 12/08/1991 till the date of filing of civil application i.e. 11/01/2016, the workman is unemployed and facing financial difficulties. It is further stated that though the workman is willing to report on duty as per the award dated 03/12/2014 passed by the Labour Court, the Corporation has refused to employ him. In my opinion, the workman can be said to have complied with the requirement of first part of section 17B. Once the workman has discharged the onus, it is then for the MCGM to prove to the satisfaction of this Court that the workman has been employed and has been in receipt of adequate remuneration during such period or part thereof in which case the order can be made that no wages shall be payable under this section for such period or part thereof.

8. The objection raised by the learned senior counsel that there is no affidavit filed by the workman in terms of section 17-B can only be regarded as a technical objection. The civil application duly verified on oath has been filed which is sufficient compliance of section 17-B of the said Act. Even the affidavit in reply that has been filed by the respondent-MCGM mentions that nothing is stated in the civil application as to what efforts workman has made in order to secure any other employment. It further states that the workman has not produced any document and did not discharge his burden of not being gainfully employed. It is also stated that the workman has failed to mention as to how he survived till today when as per his version, he was not gainfully employed. I am afraid, most of these submissions may hold good while deciding the question of backwages and not in respect of an application for wages under section 17-B. In my opinion, once the onus is discharged by the workman by stating on affidavit that he has not been gainfully employed during the relevant period, the burden then is on the employer in terms of the proviso

to section 17-B to satisfy this Court that the workman had been gainfully employed and received adequate remuneration. There is nothing on record in the affidavit of MCGM or in materials produced to indicate that the workman was gainfully employed or received adequate remuneration during this period. The objection of the MCGM that the workman is disentitled to claim the benefit of section 17-B, can only be stated to be rejected.

9. It is pertinent to note that the Division Bench of this Court in the case of **U.P. State Bridge Corporation Ltd.** (supra), has clearly held that the onus is on the workman and he must discharge such onus by filing affidavit in definite terms and disclosing the correct facts. This Court has further observed that whenever and wherever the Management places before the Court apparent materials to show the employment in an establishment or gainful self-employment of the workman during the relevant period, then the workman will also be expected to show that his affidavit was correct and the question as to how he subsisted during that period would also become relevant.

In this context, the Division Bench of this Court observed that an affidavit filed by the workman has to be true and on correct description of facts. The Division Bench has observed that the intention of the legislature to provide interim statutory protection is dependent upon the workman not being employed in any establishment and his filing of an affidavit to that effect. Their Lordships held that, to that extent, the provisions of section 17-B would have to receive a liberal construction as the protection to the workman is dependent upon his gainful employment including self-gainful employment.

10. In the present case, the MCGM has not placed any materials on record to indicate that the workman concerned was gainfully employed during this period. In fact, the Division Bench in **U.P. State Bridge Corporation Ltd.** (supra) has clearly held that the affidavit filed by the workman has also not to be unnecessarily elaborate stating other factors which are not contemplated under section 17B. The Division Bench was of the view, that considering the vague plea taken by the Management, the finding of the

learned Judge did not call for interference but found it difficult to accept the same as a general proposition of law.

11. The decision in **U.State Bridge Corporation Ltd.** (supra), though relied by learned Senior Advocate, on the contrary, supports the workman's case. In the facts of the present case, I am more than satisfied with the averments made in the civil application that the workman was not gainfully employed during the relevant period. The workman indicated his willingness to report for duty as per the award dated 03/12/2014. In my view, the objection of learned Senior Advocate, Shri Bukhari is devoid of any merit. I hold the application is compliant with the provisions of section 17-B of the Industrial Disputes Act, 1947.

12. So far as the question as to what would be the relevant period during which the workman is entitled for wages, the same has been duly answered by the Gujrat High Court in the case of **Hotel Inder Residency and Airport Authority of India and anr.** (supra). I am in respectful agreement with the view taken by the Gujrat High Court on this question. The date of institution of the

present petition i.e. 08/06/2015 will accordingly have to be regarded as the date from which the applicant-workman is entitled to wages under section 17-B.

13. However, as the workman has retired on 01/06/2021, the entitlement for wages under section 17-B would be for the period from 08/06/2015 upto 30/05/2021. For the view that I have taken, that the benefit of wages under section 17-B will have to be restricted till the date of retirement, I draw support from the decision of this Court in the case of **Hind Rectifiers Limited Vs. Presiding Officer, 1<sup>st</sup> Labour Court, Bombay and another<sup>4</sup>** .

14. In this view of the matter, the civil application is allowed. The MCGM to pay wages to the workman in terms of the provisions of section 17-B of the Industrial Disputes Act, 1947 with effect from 08/06/2015 upto 31/05/2021 within a period of six weeks from today.

15. The civil application is disposed of.

**(M. S. KARNIK, J.)**

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<sup>4</sup> 2000(4) Mh.L.J.622