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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.860 OF 2021
IN
WRIT PETITION NO.3548 OF 2021
WITH
INTERIM APPLICATION NO.859 OF 2021
IN
WRIT PETITION NO.3547 OF 2021**

The General Secretary, Saudi
Arabian Airlines Employees Association ..Applicant

IN THE MATTER BETWEEN

Saudi Arabian Airlines ..Petitioner
vs.

The General Secretary, Saudi
Arabian Airlines Employees Association ..Respondent

Mr. Sudhir Talsania, Senior Advocate a/w Mr. Vishal Talsania
a/w Mr. Vividh Tandon, Ms. Ritika Ajitsaria, Mr. Soham
Banerjee and Ms. Aviva Jogani i/b. Trilegal for petitioner in
writ petitions and for respondent in interim applications.

Mr. R. V. Govilkar a/w Ms. Shaba Khan i/b. Mr. Iqbal Ahmed
Siddiqui for respondent in writ petitions and for applicant in
interim applications.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 12, 2022.

ORDER :

1. By an order dated February 26, 2021, these writ
petitions were admitted and liberty was granted to the
workmen to file applications under Section 17-B of the

Industrial Disputes Act, 1947 (hereafter "the said Act", for short). In Writ Petition No.3547 of 2021, the award of the Central Government Industrial Tribunal (hereafter "CGIT", for short) under challenge is dated December 12, 2019; whereas in Writ Petition No.3548 of 2021, the award of the CGIT under challenge is dated November 25, 2019.

2. The interim applications in the writ petitions for wages under Section 17-B of the said Act came to be filed on March 10, 2021. On January 5, 2022 when these applications were listed, this Court fixed the matter for final hearing on February 21, 2022. Paragraphs 3 to 5 of the order being relevant, is reproduced thus:-

"3. The only issue involved in the writ petitions challenging the Judgment of the Industrial Tribunal granting reinstatement to the concerned workmen to their original post with full back wages and continuity of service is, as to whether the employer was precluded by an order of the Government from continuing to employ private security personnel, being a foreign international airlines. This is the only ground on which the permanent employees have been retrenched from the service by the employer. Since a short point is involved and Shri Govilkar, who has addressed the Court on-line, would be returning to Mumbai on 17/02/2022, by consent of the parties, the writ petitions are listed for final hearing on 21/02/2022.

4. By way of an interim arrangement and to balance the equities, the Management shall deposit the last drawn wages of the employees involved in this litigation for a duration of only two months. The said amount be deposited in this Court by 29/01/2022. The employees are at liberty to withdraw only 50% of the said amounts, without any conditions.

5. This would be without prejudice to the rights and contentions of the litigating parties and in the event it turns down that any of the employees has filed a false affidavit and was gainfully employed in the interregnum, the said employee would be bound to redeposit the said amount in this Court if the Management is to succeed in this litigation."

3. The matter however could not be heard on February 21, 2022 due to paucity of time. Thereafter, the interim applications were listed on September 8, 2022 when the following order came to be passed :-

"My attention is invited to the order dated January 5, 2022. In paragraph 4, it is recorded that "By way of an interim arrangement and to balance the equities, the Management shall deposit the last drawn wages of the employees involved in this litigation for a duration of only two months. The said amount be deposited in this Court by 29/01/2022. The employees are at liberty to withdraw only 50% of the said amounts, without any conditions." Accordingly, the said amount has been deposited. Though the matter was listed on February 21, 2022 for final hearing, however, it appears that due to paucity of time, the same could not be taken for final hearing.

2. The application under Section 17-B of the Industrial Disputes Act, 1947 (hereafter 'the said Act'

for short) filed on behalf of the employees is pending. If possible, I propose to hear the writ petition finally. In any case, the application under Section 17-B of the said Act will have to be heard.

3. Parties are agreeable that they are willing to proceed with the final hearing of the writ petition, subject to time constraints. In the interest of justice and having regard to the object of Section 17-B of the said Act, I am inclined to permit the applicants-employees to withdraw the balance 50% amount which has been deposited by the employer-Saudi Arabian Airlines in terms of the order dated January 5, 2022.

4. Stand over to **September 20, 2022, at 4.15 p.m.**

5. Parties to act on an authenticated copy of this order.”

4. Due to paucity of time, the Writ Petitions could not be heard finally on the assigned dates. Since these are applications under Section 17-B of the said Act, the same needs to be heard expeditiously. Mr. Talsania, learned senior advocate, made an effort to persuade me to take up the writ petitions itself for final hearing. A full-fledged hearing may not be possible for the present and therefore I proceed to decide the interim applications. I have to be cognisant of the observations made by the Supreme Court in the case of **Workmen Represented By Hindustan vs. Hindustan**

Vegetable Oils¹, that the application under Section 17-B of the said Act should be disposed of most expeditiously. The order of the Supreme Court reads thus:-

"1. Leave granted.

2. The order under challenge has been passed by a Division Bench of the High Court at Calcutta. Its operative portion states that the writ petition filed by the present appellants and their application under Section 17B of the Industrial Disputes Act should be disposed of together, expeditiously. We are of the view that an application under Section 17B should be disposed of before the principal petition and it should be disposed of most expeditiously.

3. We, therefore, set aside the order under challenge to the extent that it requires the disposal of the writ petition and the Section 17B application together and we direct that the Section 17B application should be disposed of with great promptitude and before disposal of the writ petition.

4. The Section 17B application shall be listed before a learned Single Judge of the Calcutta High Court expeditiously, and the parties may seek a fixed date of hearing. It shall be open to the parties to raise all contentions in support of and against the application. It shall also be open to the First respondent to rely upon the order of the B.I.F.R. that it states has been passed."

In the light of the observations made by the Supreme Court in **Workmen Represented By Hindustan** (supra), I proceeded to hear these interim applications.

¹ 2000 (8) SC 501

5. Interim Application No.859 of 2021 in Writ Petition No.3547 of 2021 is filed by the Union representing three workmen, namely Mr. Umesh Mangesh Parulekar, Mr. Mohd. Naeem A. Buddha and Mr. Rizwanakhter M. Patel. In Interim Application No. 860 of 2021 in Writ Petition No.3548 of 2021 the Union is representing seven workmen, namely Mr. Thomas George Vincent, Mr. Rajeev Mampuzha, Mr. Sunil Fakirchand Salve, Mr. Rajesh Brijbhushan Sharma, Mr. Devanand Laxman Ingale, Mr. Abdul Rahim Ansari and Mr. Sayed Jari A. Jafri.

6. The Union has averred that the workmen are not employed or gainfully employed or employed for adequate remuneration despite their sincere efforts. Following is the stand taken by the employees namely Mr. Umesh Mangesh Parulekar, Mr. Mohd. Naeem Rehman Buddha, Mr. Rizwanakhter M. Patel, Mr. Thomas George Vincent, Mr. Rajeev Mampuzha, Mr. Abdul Rahim Ansari and Mr. Sayed Jari A. Jafri in the affidavit which has been separately filed by each of the workman:-

- a) That he is not gainfully employed or employed for adequate remuneration despite his sincere efforts.

- b) That his financial position is bad and he has to depend upon relatives and friends for monetary help for all exigencies of life.
- c) That he is not employed inspite of his sincere efforts to gain employment and therefore entitled to the last drawn wages as provided under Section 17-B of the said Act.

7. So far as Mr. Sunil Fakirchand Salve is concerned, he has stated in his affidavit that he is drawing a salary of Rs.23,840/- per month on an average and that he is earning much lesser than what he used to earn at the time of termination of his services. He has further stated that his financial position is bad and he has to depend upon relatives and friends for monetary help for all exigencies of life. He has further stated that since he is not gainfully employed nor he is employed for adequate remuneration, he is entitled to the last drawn wages under Section 17-B of the said Act. Likewise, Mr. Rajesh Brijbhushan Sharma has stated that he is drawing a salary of Rs.20,000/- per month and filed an affidavit similar to the one as Mr. Sunil Fakirchand Salve. Mr. Devanand Laxman Ingale has filed an

affidavit stating that he is drawing a salary of Rs.10,195/- per month. These three workmen have stated that they were in receipt of salary of Rs 84,085/- per month from the petitioner-employer at the time of termination of their services.

8. The employer- Saudi Arabian Airlines filed an affidavit in reply dated July 27, 2021 contending that the affidavits filed by the workmen do not fulfill the requirement of Section 17-B of the said Act and hence the interim applications should be dismissed. It is moreover submitted that three of the workmen are gainfully employed and therefore not entitled to the benefit of Section 17-B of the said Act.

9. This Court vide order dated November 17, 2021 recorded the statement of learned counsel for the workmen that an additional affidavit in respect of all the workmen would be placed on record on or before the adjourned date of hearing. Accordingly, separate additional affidavits dated November 22, 2021 came to be filed by each of the workmen stating that they are not employed in any

establishment. It is further stated that their financial position is bad and they have to depend upon relatives and friends for monetary help for all exigencies of life.

10. So far as Mr. Sunil Fakirchand Salve is concerned, it is stated in the affidavit that he was drawing wages of Rs.29,230/- during the period of his gainful employment till April 30, 2021, whereafter, he had to resign at the behest of the Company. So also Mr. Rajesh Brijbhushan Sharma has stated in the affidavit that he was drawing wages of Rs.29,256/- till end of September, 2021, however, at the behest of the Management where he was gainfully employed, he had to resign from service with effect from October 15, 2021. The third workman, Mr. Devanand Laxman Ingale has filed an affidavit indicating that he is working with M/s. K. Hospitality drawing wages of Rs.21,253/- per month. Mr. Ingale continues in employment.

11. So far as the workman, Mr. Umesh Mangesh Parulekar is concerned, in the affidavit dated July 27, 2021, filed by the employer, it is stated that the workman owns and

operates his own studio for professional photography, by the name of Sanil Photo Studio having his office at 4-241 Creado Apts, 1st Floor, Juhu Church Road, opposite Agnelo Opticians Juhu, Mumbai-400 049. It is further stated that Umesh has been receiving monies from one M.V.V. Industrial Developer. A photocopy of the business card of his photo studio is produced on record. Placing his response, in the additional affidavit filed by the workman-Mr. Umesh Mangesh Parulekar dated September 1, 2021, he has denied owning and operating Sanil Photo Studio. He stated that he has been assisting Mr. Milind Patil who is running Sanil Colour Lab and Studio at the given address occasionally as and when required for petty and sundry work. The workman denied that he is in employment of Mr. Milind Patil. Mr. Umesh further denied that he is in any way associated with the operation, administration and management of Sanil Colour Lab and Studio.

12. From the materials on record, I find that for some period, Mr. Sunil Fakirchand Salve and Mr. Rajesh Brijbhushan Sharma were in gainful employment, but have

since resigned stating that the same is at the behest of the Company. Mr. Devanand Laxman Ingale, however, continues to be gainfully employed drawing wages of Rs.21,253/- per month. There are no details as to how much Mr. Umesh Mangesh Parulekar is earning but there is material to indicate that he has been assisting the owner of Sanil Photo Studio occasionally.

13. Mr. Govilkar, learned counsel for the workmen invited my attention to the provisions of Section 17-B of the said Act. He submitted that the workmen who are not gainfully employed are entitled to wages under Section 17-B of the said Act. He further submitted that in respect of those workmen who are gainfully employed, the details have been honestly provided for by the workmen. The workmen cannot be said to be guilty of suppression of facts. Mr. Govilkar submitted that the remuneration received by the said workmen is not adequate and in any case the workmen are entitled to the last drawn wages under Section 17-B of the said Act during the pendency of the Writ Petitions. He submits that in any case the workmen are entitled to the

balance of the wages after deducting the wages the workmen are currently in receipt of. He further submits that two of the workmen, namely, Mr. Sunil Fakirchand Salve and Mr. Rajesh Brijbhushan Sharma have resigned at the behest of the Management and presently are not gainfully employed. He invited my attention to their affidavits to submit that even they have to depend on their relatives for subsistence. Mr. Govilkar submitted that the workmen have discharged the onus in terms of Section 17-B of the said Act.

14. Mr. Govilkar relied upon the following decisions :-

- (1) **Choudhary Saraiah vs. Executive Engineer, Panchayat².**
- (2) **Dena Bank vs. Kiritkumar T. Patel³.**
- (3) **Regional Authority, Dena Bank and another vs. Ghanshyam⁴.**
- (4) **Birdhi Chand Naunag Ram Jain vs. P.O., Labour Court No.IV and others⁵.**
- (5) **Mrs. Kiran Uppal Prop. M/s. Clas Vs. Ashok**

² (1999) 9 SCC 229

³ 1997 (2) GUJLH 946, AIR 1998 SC 511

⁴ Appeal (Civil) No.3731 of 2021

⁵ 2004 (72) DRJ 297, Del HC 2003

Kumar and others⁶.

(6) Oil and Natural Gas Corporation Ltd. vs. Ninan Thomas⁷.

(7) Bhagwanbhai Mansing Detroj vs. Gujarat State Road Transport⁸.

(8) M/s. Control Print Limited vs. Ajitpal Singh Rana⁹.

(9) Ineos Styrolution India Limited vs. Shaileshbhai Manibhai Patel¹⁰.

15. Mr. Talsania, learned senior advocate on the other hand submitted that under Section 17-B of the said Act, the liability of the employer to pay full last drawn wages to the workmen is triggered only if the workmen file an affidavit, unequivocally demonstrating that they have not been employed during the pendency of the proceedings before the High Court/Supreme Court and that they have been unable to procure employment despite best efforts to do so. Mr. Talsania in support of this submission relied upon the

6 CM No.6323/2006 in WP(C) No.11871/2005, Del HC 2012.

7 Bom HC 2008

8 Guj HC 2008

9 CMP No.6016 of 2018 in CWP No.361 of 2018 a/w CWP No.1610 of 2018 dated 08.01.2019.

10 R/Letters Patent Appeal No.1023 of 2021 dated 25.02.2022.

decision of this Court in **U. P. State Bridge Corporation Limited vs. Maharashtra General Kamgar Union**¹¹

Learned senior advocate submitted that assuming without admitting that the employer is liable, even then the liability accrues from the date of filing of the affidavit in compliance with Section 17-B of the said Act. He placed reliance in the case of **Uttaranchal Forest Development Corporation and another vs. K. B. Singh and others**¹² in support of his submission. It is further submitted that the objective of Section 17-B of the said Act is to sustain the workmen through litigation and the amount paid under Section 17-B is not recoverable even if the main petition succeeds. According to him, hence, it is imperative that the aforesaid burden on the workmen is duly and properly discharged, in support, Mr. Talsania places reliance on **Dena Bank Vs. Kiritkumar T. Patel**¹³. Mr. Talsania was at pains to point out that the workmen have failed to discharge the burden under Section 17-B of the said Act for the following reasons :-

11 2008 (4) Mh.L.J. 297

12 (2005) 11 SCC 449

13 (1992) 2 SCC 106

(i) In their first affidavits dated 10 March 2021 filed along with IAs. 859 and 860 of 2021, 3 workmen admitted that they were gainfully employed. The remaining workmen have stated that they are "not gainfully employed or employed for adequate remuneration".

(ii) In the reply filed to the IAs and during previous hearings, the Petitioner objected to the aforesaid statements as they are ex facie contradictory. The Petitioner also pointed out various instances where the Respondent workmen were employed.

(iii) One of the workmen in IA 859 in WP 3547, Mr. Umesh Parulekar, filed an additional affidavit dated 1 September 2021, wherein he admitted to assisting the proprietor of a photo studio, without providing any particulars regarding income received from the same (paragraph 3 of the affidavit). It is the Petitioner's case that Mr. Parulekar is the owner of the photo studio.

(iv) Once the Petitioner had highlighted the

discrepancies in the affidavits, the workmen filed additional affidavit dated 22 November 2021, wherein:

(a) 3 workmen (Sunil Salve, Rajesh Sharma and Devanand Ingle) admitted that they were employed. Mr. Salve and Mr. Sharma further admitted to having resigned from their jobs.

(b) The salary slips annexed by these workmen indicate that were not present for work on all days of the month, indicating that the remuneration received by them is, in fact, lower than what they would have been entitled for the entire month of work.

(c) The salary slips also indicate that the income cited by the workmen in their March affidavits was incorrect.

16. Mr. Talsania further submitted that despite being given multiple opportunities, the workmen have not filed affidavits in compliance with Section 17-B of the said Act and therefore Interim Applications deserve to be dismissed. It is submitted that the affidavits filed by the workmen merely

state that the workmen are not “employed in any establishment”, but do not talk of being gainfully employed. It is urged that the workmen may easily be self-employed and there is no denial about the workmen being self-employed. Learned senior advocate urged that the burden on the employer under Section 17-B would be to the tune of INR 7.76 lakhs per month. He urged that it is for this reason that this Court by order dated January 5, 2022, decided to hear the Writ Petitions finally by consent of both the parties. It is further submitted that the employer deposited two months’ last drawn wages, amounting to INR 15.5 lakhs approximately, which have been withdrawn by the workmen. He submits that this is in addition to the deposit of back wages amounting to INR 1,98,54,467/- and INR 4,80,93,633 made by the employer in respect of Writ Petition No.3547 and Writ Petition No.3548, respectively.

17. Mr. Talsania relied upon the following decisions in support of his submissions :-

(1) Kirloskar Pneumatic Kamgar Sangh vs. Kirloskar Pneumatic Company Limited¹⁴.

14 (2010) SCC OnLine Bom 395

(2) Nemchand S. Sabale vs. Spaco Carburettors (India) Limited and anr.¹⁵

(3) Management of National Institute of Port Management, Chennai vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court Chennai and another¹⁶.

(4) North-East Karnataka Road Transport Corporation vs. M. Nagangouda¹⁷.

(5) Airport Authority of India and another vs. Bharat H. Parmar and others¹⁸.

(6) Ravindra Sahadu Sonawane vs. Municipal Corporation of Greater Mumbai and another¹⁹

(7) Ninan Thomas vs. Oil and Natural Gas Corporation Limited and another²⁰

18. Heard learned counsel for the parties.

19. At the outset, let me appreciate the scope of Section 17-B of the said Act which reads thus :-

"17B. Payment of full wages to workman pending proceedings in higher courts.-

15 (2016) SCC OnLine Bom 13344

16 2005 (2) LLN 299

17 (2007) 10 SCC 765

18 Letters Patent Appeal No.2066 of 2010 decided on 07.10.2010.

19 Civil Application No.820 of 2016 in Writ Petition No.6288 of 2015.

20 (2009) 1 Bom CR 137

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.

20. In **Ninan Thomas** (supra), this Court has referred to the Division Bench's decision in **U. P. State Bridge Corporation Limited** (supra) which dealt extensively with the law on the subject. Paragraph 3 and 4 read this :-

"3. A Division Bench of this Court presided over by the learned Chief Justice, Hon'ble Mr. Justice Swatanter Kumar has in a recent judgment delivered on 17th January, 2008 in (U.P. State Bridge Corporation Ltd. vs. Maharashtra General Kamgar Union), L.P.A. 290 of 2007 reported in 2008 (2) Bom.C.R. 619, and connected matters dealt extensively with the law on the subject. The Division Bench has referred to the judgments of the Supreme Court which hold the field. The principle which has been laid down by the Division

Bench is that the filing of an affidavit by the workman under section 17-B is not a mere technicality but, is in order to ensure that a substantive disclosure of true and correct facts which would unequivocally show that the workman was not gainfully employed is made. The Division Bench has held that the expression "gainfully employed" would include self-employment from where income could be generated by the workman. A true disclosure of facts which fall within the personal knowledge of the workman is necessary and the onus is placed on the workman to comply with the statutory provisions contained in section 17-B. The Division Bench held thus:

"In the light of the judgments that we have noted above, there can be no doubt that the onus for seeking statutory interim protection is upon the workman and where Management claims benefit of the proviso of section 17B, the onus is upon the Management. The onus on the workman is a very limited one and once an affidavit as contemplated under the provisions of section 17B is filed and the court is satisfied that the workman was not employed in any establishment during the relevant period, direction for payment of wages under section 17B would be issued. Such an affidavit filed by the workman has to be true and correct description of facts as per the requirements of law. It is expected that the workman would make a definite and correct averment in the affidavit in regard to his non-employment and would show that he could not be employed despite his efforts. It will be for the workman to state categorically that he was not gainfully employed and was not in self-gainful employment which dependent on the facts and circumstances of the case would be a consideration before the court to pass a directive for payment of wages and determination of such wages even at the interim stage."

4. The Division Bench has further observed that the requirement of filing an affidavit cannot be held to be

met by merely saying that the workman was not employed in any establishment:

"The onus is on the workman and he must discharge such onus by filing affidavit in definite terms and disclosing the correct facts. Whenever and wherever the Management places before the court apparent material 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."

21. It is useful to note that in paragraph 9, this Court in

Ninan Thomas (supra) held thus :-

"9. Section 17-B has been enacted by Parliament in order to provide relief to a workman who is ordered to be reinstated under an award of the Labour Court or the Industrial Tribunal during the pendency of the proceedings where the award is under challenge before the High Court or the Supreme Court. The payment which is required to be made is in the nature of subsistence allowance which is not refundable or recoverable from the workman even if the award is set aside by the High Court or the Supreme Court. Having regard to the nature and object of the provision and the judgment of the Supreme Court, it is impossible to subscribe to the view that this Court should in the exercise of its jurisdiction under Article 226, reject the application under section 17-B, even though all the requirements which have been spelt out in the statutory provision have been fulfilled, by looking into the legality of the award. That would amount to rewriting legislation and imposing a condition which Parliament has not imposed. That lies beyond the jurisdiction of the Court under Article 226. In these

circumstances, the civil application would have to be allowed and is accordingly allowed. Accordingly, the civil application is disposed of directing the employer, ONGC, to pay to the applicant before the Court the wages last drawn by him from 21st March, 2007 which is the date on which the award was stayed by a learned Single Judge of this Court. The civil application is accordingly disposed of.”

(emphasis by me)

22. I have categorized the workmen in different groups depending on their employment/non-employment and accordingly dealt with the applications.

23. The first group comprises of Mr. Thomas George Vincent, Mr. Rajeev Mampuzha, Mr. Abdul Rahim Ansari, Mr. Sayed Jari A. Jafri, Mr. Mohd. Naeem Rehman Buddha and Mr. Rizwanakhter M. Patel :-

In the present interim applications, the employees have specifically stated that they are not gainfully employed or employed for adequate remuneration despite their sincere efforts. It is specifically stated that their financial position is bad and they have to depend upon relatives and friends for monetary help for all exigencies of life. It is further stated on oath that they are not employed despite their sincere efforts to gain employment and therefore entitled to the last drawn wages as provided under Section 17-B of the said Act. No material is placed on record by the

employer that these workmen had been employed and had been receiving adequate remuneration during such period. But for saying that the employees may be self-employed, except for such a bare stand of the employer without anything more, that the employees may be self-employed and that no sincere efforts were made by these employees to secure the employment, there is nothing on record placed by the employer to dislodge or doubt the statements made on oath by the workmen.

24. In my opinion, these workmen have discharged their onus by filing the affidavit that they had not been employed in any establishment during such period, the requirement of first part of Section 17-B stands fulfilled. In terms of the proviso, the onus is then on the employer to prove to the satisfaction of the High Court or the Supreme Court that such workmen had been employed and had been receiving adequate remuneration during any such period or part thereof in which case the Court shall order that no wages shall be payable under Section 17-B of the said Act.

25. As indicated earlier, the employees have discharged their onus by filing an affidavit and stating that the workmen had not been employed in any establishment during such period. Even after a stand was taken by the employer that these employees may be self-employed and upon raising an objection that the affidavit has not been filed in terms of Section 17-B of the said Act, these employees have filed additional affidavits stating that they are not employed in any establishment and that as a result of poor financial condition have to depend upon relatives and friends for monetary help for all exigencies of life. In my opinion, expecting the workmen to file any further affidavits would defeat the object of Section 17-B of the said Act which is plain and unambiguous as propounded by His Lordship in **Ninan Thomas** (supra). The employer has completely failed to discharge the burden in terms of the proviso of Section 17-B, and instead is expecting the employees to discharge additional burden than that is required of the workmen under Section 17-B of the said Act. Except saying that the workmen may be gainfully

employed or self employed, the employer has filed a vague affidavit giving no apparent materials indicating their employment in which case the workmen could have been called upon to respond. The employer has failed to place apparent materials to show employment or gainful employment of the workmen.

26. I am satisfied that the employees, namely, Mr. Thomas George Vincent, Mr. Rajeev Mampuzha, Mr. Abdul Rahim Ansari, Mr. Sayed Jari A. Jafri, Mr. Mohd. Naeem Rehman Buddha and Mr. Rizwanakhter M. Patel were not employed in any establishment during the relevant period and have duly filed affidavits as required by Section 17-B of the said Act, therefore direction for payment of wages to them under Section 17-B of the said Act will have to be issued. The affidavits filed by these employees fulfill the requirement of law as there are definite and correct averments made in the affidavits as regards the non-employment of these employees. In the facts of the present case, there is nothing to indicate that these employees are in self-gainful employment. Having regard to the averments

made in the affidavit of the employees and the corresponding stand of the employer lacking in material particulars in terms of the proviso to Section 17-B of the said Act, it is sufficient for me to conclude that the requirement of Section 17-B of the said Act is fulfilled to claim wages. It is not possible for me to stretch the requirement of Section 17-B of the said Act any further having regard to its express language and intent. The employer is directed to pay this group of workmen wages under Section 17-B of the said Act. So far as the employees in this group are concerned, the Interim Applications are allowed.

27. Mr. Sunil Fakirchand Salve and Mr. Rajesh Brijbhushan Sharma :-

So far as the employees, Mr. Sunil Fakirchand Salve and Mr. Rajesh Brijbhushan Sharma are concerned, for part of the period contemplated by Section 17-B of the said Act, they were in gainful employment. They have honestly filed affidavits indicating that they were in gainful employment during the part of the period and had to resign later at the

behest of the employer. Mr. Talsania submitted that the remuneration which was received by these workmen has to be regarded as adequate for the purpose of Section 17-B and there was no need for them to resign from their employment. The proviso to Section 17-B of the said Act, for denying the benefits of Section 17-B of the said Act, requires that such workmen had been employed and had been receiving adequate remuneration during such period. The provisions of Section 17-B of the said Act cannot be construed narrowly. It is not possible for me to accept the contention of Mr. Talsania that the mere factum of receipt of wages on account of employment is sufficient to deny the wages under Section 17-B. The entitlement of a workmen under Section 17-B is full wages last drawn and nothing more than that. It is not open for the workmen to contend that the full wages last drawn are not adequate. The workmen are not entitled to more wages than stipulated by Section 17-B of the said Act. But for the filing of the proceedings, the workmen would be entitled to reinstatement with full wages as per their current

entitlement which may be more than full wages last drawn. The adequate remuneration in terms of the proviso cannot therefore be construed as anything less than the full wages last drawn by the workman. The expression 'adequate remuneration' in the proviso will have to be given a definite meaning. The Labour Court directed reinstatement. The employer preferred present proceedings against such award in this Court. The employer is liable to pay full wages last drawn by the workman subject to the workmen fulfilling the requirement of Section 17-B of the said Act. A situation cannot be comprehended where a workman who is employed during this period is placed in a worst of position than a workman who is not employed in any establishment. If I am to accept the submission of learned senior advocate, then in a given situation, as in the present case, the workmen who are not employed are in receipt of full wages last drawn, whereas a workmen who are in employment will be in receipt of much less wages. The only meaning which can be given to the expression "adequate remuneration" is that the same should be commensurate with the full wages

last drawn by the workman at the time of termination of his services. However, the wages/remuneration which the employees have received during this period or part thereof will have to be deducted from the full wages last drawn in terms of Section 17-B of the said Act and the employer shall be liable to make the payment after effecting such deductions.

28. The workmen Mr. Sunil Fakirchand Salve and Mr. Rajesh Brijbhushan Sharma contended that presently they are not in employment as they had to resign at the behest of the employer. Except for the bare stand of the employer which these workmen denied, there is nothing to indicate that these workmen have resigned voluntarily to claim the benefit of Section 17-B wages. No particulars from the Company where they were in employment during this period is placed on record. These employees have honestly filed affidavits giving particulars of their employment. There is no reason to doubt the stand of such employees. The employer is liable to pay wages to these employees namely, Mr. Sunil Fakirchand Salve and Mr. Rajesh Brijbhushan

Sharma under Section 17-B of the said Act after deducting the wages/remuneration which they have received during this period from the full wages last drawn. The balance of arrears after such deductions be paid over to Mr. Sunil Fakirchand Salve and Mr. Rajesh Brijbhushan Sharma. Over and above, they are entitled to wages under Section 17-B of the said Act from the date they resigned from the employment.

29. Mr. Devanand Laxman Ingale :-

So far as Mr. Devanand Laxman Ingale is concerned, he has stated that he continues to be in employment. For the reasons similar to the one in respect of Mr. Sunil Fakirchand Salve and Mr. Rajesh Brijbhushan Sharma, it is directed that the petitioner-employer pay to Mr. Devanand Laxman Ingale, during the pendency of this writ petition, full wages last drawn by him, after deducting the wages received by him from the employment secured during this period.

30. Mr. Umesh Mangesh Parulekar :-

So far as Mr. Umesh Mangesh Parulekar is concerned, initially he had filed an affidavit that he is not in any employment and facing financial difficulties. Later on, some material was produced by the employer that he is owning and operating the photo studio. The employee denied that he is the owner of the photo studio and stated that only occasionally he was assisting Mr. Milind Patil, who is running Sanil Colour Lab and Studio, as and when required for petty and sundry work. It was denied that he is in employment of Mr. Milind Patil and further denied his association with the operation, administration and management of Sanil Colour Lab and Studio in any manner. There is nothing on record to indicate that the said employee was receiving adequate remuneration. The employee accepted that he was at times assisting Mr. Milind Patil, the owner of the Photo Studio for petty and sundry work. The employee concerned has taken a stand that he was not in receipt of any remuneration and that he is not in employment of the Photo Studio.

31. It is difficult to ascertain whether the employee was in receipt of adequate remuneration in terms of proviso of Section 17-B of the said Act. In my opinion, the employee ought to have stated the correct facts even before the employer could bring materials on record regarding his association with the Photo Studio. The materials on record, however, is not enough to deprive the workman the benefit of Section 17-B of the Act altogether. In the facts of the present case, I am inclined to direct the employer to pay 50% of the full wages last drawn in terms of Section 17-B of the Act to the employee-Mr. Umesh Mangesh Parulekar.

32. Now the question is from which date the employer is liable to pay wages during the pendency of these proceedings. Mr. Govilkar invited my attention to the order dated September 26, 2022 passed in **Ravindra Sahadu Sonawane** (supra) where I have taken a view that the date of institution of the Writ Petition will have to be regarded as the date from which the applicant/workman is entitled to wages under Section 17-B of the said Act. Mr. Talsania invited my attention to the order passed by the Supreme

Court in **Uttaranchal Forest Development Corporation and another** (supra) to support his submission that the entitlement of wages under Section 17-B would be from the respective date of filing of affidavit. The decision in **Uttaranchal Forest Development Corporation and another** (supra) was not brought to my notice when I decided **Ravindra Sahadu Sonawane** (supra). According to Mr. Talsania, the affidavits are filed by the employees on November 22, 2021 and therefore entitlement of Section 17-B wages has to be regarded from this date. It is pertinent to note that Writ Petition No.3548 of 2021 was filed on October 1, 2020; whereas Writ Petition No.3547 of 2021 was filed on January 20, 2021. On February 26, 2021, this Court admitted the Writ Petitions and stayed the impugned awards with a direction to deposit the full back wages awarded by the Tribunal till date in this Court within a period of eight weeks from today. The employer has deposited the entire amount of back wages in this Court as directed by the order dated February 26, 2021. It is thereafter that the Interim Applications in both these Writ

Petitions for wages under Section 17-B came to be filed on March 10, 2021. The Interim Applications are filed on oath duly verified complying with the requirements of Section 17-B. It is only that the additional affidavits supporting the Interim Applications came to be filed by the workmen on November 22, 2021. It is not possible for me to agree with Mr. Talsania that the date on which these additional affidavits are filed should be the date of entitlement of wages under Section 17-B. The averments in the Interim Applications made on oath is sufficient compliance of the requirement of Section 17-B. Since the full back wages have been deposited by the employer upto February 26, 2021, which secures the workmen, in my opinion, in the peculiar facts of this case, it would be reasonable to hold that the entitlement of the employees for 17-B wages would be from the date of the filing of the Interim Applications i.e. March 10, 2021. Interim Applications are allowed to the extent indicated hereinbefore.

33. Some part of the wages have been paid. The balance of the arrears be paid after adjusting the same within a

period of six weeks from the date of uploading of the order.

34. Interim Applications stand disposed of. No costs.

(M. S. KARNIK, J.)