

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th OCTOBER, 2022

IN THE MATTER OF:

+ **LPA 507/2021**

SH SURENDER KUMAR

..... Appellant

Through: Mr. Jawahar Raja, Ms. Meghna De,
Mr. Sachin Kumar, Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through: Ms. Namrata Mukim, Standing
Counsel with Mr. Ramesh Chander, SO
and Mr. Om Parkash, SSA

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. Aggrieved by the Order dated 06.12.2021, passed by the learned Single Judge in W.P.(C) 535/2020, restricting the claim of the Appellant herein for payment of full wages under Section 17B of the Industrial Disputes Act, 1947 (*hereinafter referred to as 'the Act'*) from the date of filing of the application under Section 17B of the Act and not from the date of passing of award, the Appellant/workmen has filed the instant appeal.

2. The Appellant herein was working as *Safai Karmchari* with the Respondent/employer. He challenged his termination by initiating proceedings before the Labour Court under the Act. The Labour Court by its award dated 31.08.2019 directed the Respondent herein to reinstate the Appellant herein with full back wages and with continuity of service and all

consequential benefits and cost of litigation. The Respondent herein challenged the said award by filing a Writ Petition, being W.P.(C) 535/2020, before this Court. It is stated by the Appellant herein that a copy of the said Writ Petition was not served on him and it was made available to him only on 18.02.2020. It is stated that the case was being adjourned due to lockdown and the Writ Petition was listed on 17.11.2020 on which date the learned Single Judge directed the Appellant herein to file a counter affidavit. On 03.12.2020, the Appellant herein filed an application, being CM APPL. 31264/2020, under Section 17B of the Act. It is pertinent to mention here that in terms of the Order dated 17.02.2020, a sum of Rs.10,00,000/- has been deposited by the Respondent herein as a condition precedent for staying the recovery proceedings. Material on record indicates that *vide* Order dated 03.09.2021 the learned Single Judge directed to release Rs.2,50,000/- to the Appellant herein who was in dire need of money. The learned Single Judge, after relying on the Judgment of Apex Court in Uttaranchal Forest Development Corporation and Drs. v. K.B. Singh and Drs., (2005) 11 SCC 449, and the Judgment of the Division Bench of this Court in Municipal Corporation of Delhi v. Santosh Kumari & Anr., 2012 SCC OnLine Del 4390, disposed of CM APPL. 31264/2020 *vide* Order dated 06.12.2021 by holding the Appellant is entitled for payment of wages under Section 17B of the Act only from the date of filing of application for the reason that the award was passed by the Labour Court on 31.08.2019 and the Appellant herein/workman filed the application under Section 17B of the Act only in November, 2020.

3. It is this Order which has been challenged by the Appellant/workman in the instant appeal by contending that he is entitled to payment of wages under

Section 17B of the Act from the date of award and there is no delay on his part in filing the application under Section 17B of the Act.

4. Heard the learned Counsels for the parties and perused the material on record.

5. Section 17B of the Act reads as under:

" 17B. 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.]"

6. The Apex Court in Dena Bank v. Ghanshyam, (2001) 5 SCC 169, has observed that Section 17B of the Act provides that when an employer, who is aggrieved by an award directing the reinstatement of the workman, 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. A proviso under Section 17B of the Act states that if the High Court or the Supreme Court is satisfied 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 thereof, as the case may be.

7. The Apex Court in Dena Bank v. Ghanshyam (supra) has further observed that the Statement of Objects and Reasons for inserting Section 17B of the Act indicates that when Labour Courts pass awards of reinstatement, they are often contested by employers in the Supreme Court and High Courts and to mitigate the hardship that would be caused due to delay in implementation of the award, it was proposed to provide for payment of wages last drawn by the workman concerned from the date of the award till the dispute between the parties is finally decided in the High Courts or the Supreme Court. It was held that in the event of an employer not reinstating the workman and not seeking any interim relief in respect of the award directing reinstatement of the workman or in a case where the Court is not inclined to stay such award in *toto*, the workman has two options, either to initiate proceedings to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is earlier.

8. A perusal of the judgment of the Apex Court in Dena Bank (supra) clearly indicates that the employer is entitled to the benefit of Section 17B of the Act from the date of passing of the award, however, the Apex Court in a subsequent Order in Uttaranchal Forest Development Corpn. v. K.B. Singh,

(2005) 11 SCC 449, in the facts of that case, has held that the workman's entitlement for wages would be from the dates of filing of affidavits by him. The said Order does not indicate as to whether in all cases the amount has to be paid only from the date of filing of the application under Section 17B or from the date of passing of award.

9. A perusal of Section 17B of the Act indicates that such payment should be from the date of passing of award. The two judgments, i.e. Dena Bank (supra) and Uttaranchal Forest Development Corpn (supra) came up for interpretation before the Division Bench of this Court in Municipal Corporation of Delhi v. Santosh Kumari & Anr., 2012 SCC OnLine Del 4390. The Division Bench noticed that a Single Bench of this Court in Food Craft Instt. v. Rameshwar Sharma, 2006 SCC OnLine Del 505, has culled out various principles from various judicial pronouncements touching upon various facets for grant of interim relief under Section 17B of the Act, in the following manner:

“(i) An application under Section 17B can be made only in proceedings wherein an industrial award directing reinstatement of the workman has been assailed.

(ii) This Court has no jurisdiction not to direct compliance with the provisions of Section 17B of the Industrial Disputes Act if all the other conditions precedent for passing an order in terms of the Section 17B of the Act are satisfied [Re : (1999) 9 SCC 229 entitled Choudhary Sharai v. Executive Engineer, Panchayati Raj Department].

(iii) As the interim relief is being granted in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court can grant better benefits which may be more just and equitable on the facts of the case than the relief contemplated by Section 17B. Therefore,

dehors the powers of the Court under Section 17B, the Court can pass an order directing payment of an amount higher than the last drawn wages to the workman [Re : (1999) 2 SCC 106 (para 22), Dena Bank v. Kirtikumar T. Patel].

(iv) Such higher amount has to be considered necessary W.P(C) No. 11803/2005 Page 6 of 11 in the interest of justice and the workman must plead and make out a case that such an order is necessary in the facts of the case.

(v) The Court can enforce the spirit, intendment and purpose of legislation that the workman who is to get the wages from the date of the award till the challenge to the award is finally decided as per the statement of the objections and reasons of the Industrial Disputes(Amendment) Act, 1982 by which Section 17B was inserted in the Act [Re : JT 2001 (Suppl.1) SC 229, Dena Bank v. Ghanshyam (para 12)].

(vi) An application under Section 17B should be disposed of expeditiously and before disposal of the writ petition [Re : (2000) 9 SCC 534 entitled Workman v. Hindustan Vegetable Oil Corporation Ltd.].

(vii) Interim relief can be granted with effect from the date of the Award [Re, JT 2001 Supplementary 1 SC entitled Regional Authority, Dena Bank v. Ghanshyam; 2004 (3) AD (DELHI) 337 entitled Indra Perfumery Company v. Sudarshab Oberoi v. Presiding Officer].

(viii) Transient employment and self-employment would not be a bar to relief under Section 17B of the Industrial Disputes Act [Re : (2000) 1 LLJ 1012 entitled Taj Services Limited v. Industrial Tribunal; (1984) 4 SCC 635 entitled Rajinder Kumar Kundra v. Delhi Administration; (2004) 109 DLT 1 entitled Birdhi Chand Naunag Ram Jain v. P.O., Labour Court No. IV].

(ix) *The Court while considering an application under Section 17B of the ID Act cannot go into the merits of the case, the Court can only consider whether the requirements mentioned in Section 17B have been satisfied or not and, if it is so, then the Court has no option but to direct the employer to pass an order in terms of the statute. It would be immaterial as to whether the petitioner had a very good case on merits [Re : 2000 W.P(C) No. 11803/2005 Page 7 of 11(5) AD Delhi 413 entitled Anil Jain v. Jagdish Chander].*

(x) *A reasonable standard for arriving at the conclusion of the quantum of a fair amount towards subsistence allowance payable to a workman would be the minimum wages notified by the statutory authorities under the provisions of the Minimum Wages Act, 1948 in respect of an employee who may be performing the same or similar functions in scheduled employments. [Re : Rajinder Kumar Kundra v. Delhi Administration, (1984) 4 SCC 635; Sanjit Roy v. State of Rajasthan, (1983) 1 SCC 525 : AIR 1983 SC 328; decision dated 3rd January, 2003 in Writ Petition (Civil) Nos. 3654 & 3675/1999 entitled Delhi Council for Child Welfare v. Union of India; DTC v. The P.O., Labour Court No. 1, Delhi, 2002 II AD (Delhi) 112 (para 12, 13)]*

(xi) *Interim orders directing payment to a workman can be made even on the application of the management seeking stay of the operation and effect of the industrial Award and order. Such interim orders of stay sought by the employer can be granted unconditionally or made conditional subject to payment or deposits of the entire or portion of the awarded amount together with a direction to the petitioner employer to make payment of the wages at an appropriate rate to the workman. Such an order would be based on considerations of interests of justice when balancing equities.*

(xii) For the same reason, I find that there is no prohibition in law to a direction by the Court to make

an order directing payment of the wages with effect from the date of the Award. On the contrary, it has been so held in several judgments that this would be the proper course [Re : Regional Authority, Dena Bank v. Ghanshyam, reported at JT 2001 Supp (1) SC 229 and Indra Perfumery Co. Thr. Sudershab Oberoi v. Presiding Officer, 2004 III AD (Delhi) 337].

(xiii) *While passing an interlocutory direction for payment of wages, the Court may also secure the interests of the W.P(C) No. 11803/2005 Page 8 of 11 employer by making orders regarding refund or recovery of the amount which is in excess of the last drawn wages in the event of the industrial award being set aside so as to do justice to the employer.*

(xiv) *A repayment to the employer could be secured by directing a workman to given an undertaking or offer security to the satisfaction of the Registrar (General) of the Court or any other authority [Re : para 12, 2002 (61) DRJ 521 (DB), Hindustan Carbide Pvt. Ltd. v. Govt. of NCT of Delhi (supra)]*

(xv) *In exercise of powers under Article 226 and Article 136 of the Constitution, if the requisites of Section 17B of the Industrial Disputes Act, 1947 are satisfied, no order can be passed denying the workman the benefit granted under the statutory provisions of Section 17B of the Industrial Disputes Act, 1947 [Re : (1999) 2 SCC 106, Dena Bank v. Kirtikumar T. Patel (para 23)].*

(xvi) *Gainful employment of the workman; unreasonable and unexplained delay in making the application by the workman after the filing of the petition challenging the award/order; offer by the employer to give employment to the workman would be a relevant factors and consideration for the date from which the wages are to be permitted.*

(xvii) *It will be in the interest of justice to ensure if the facts of the case so justify, that payment of the amount*

over and above the amount which could be directed to be paid under Section 17B to a workman, is ordered to be paid only on satisfaction of terms and conditions as would enable the employer to recover the same [para 13 of Regional Manager, Dena Bank v. Ghanshyam].

(xviii) The same principles would apply to any interim order in respect of a pendent lite payment in favour of the Workman." (emphasis supplied)

After culling out the principles laid down by the learned Single Judge of this Court in Food Craft Instt (supra), the Division Bench of this Court noticed another judgment passed by another Division Bench of this Court *vide* Order dated 29.07.2008 in Delhi Transport Corporation v. Inderjeet Singh, wherein the Division Bench has held as under:

"6. As regards the delay by the workman in approaching the Court for relief under Section 17-B ID Act, it requires to be recalled that the workman could have filed such an application only after the DTC filed its writ petition. The object of the provision is that the wages should not be denied to the workman when he has been able to state on affidavit that he has remained unemployed and the employer is unable to show anything to the contrary. In the circumstances, the benefit under Section 17B ID Act cannot be denied to the workman on the ground that he filed the application three years after the writ petition was filed by the DTC. The entitlement of the workman to wages under Section 17B hinges on whether in fact he remained unemployed since his termination. That it is a question of fact. In light of the unrebutted claim of the workman to that effect in the instant case, his application under Section 17B ID Act had to be allowed. "

After noticing the said judgments, the Division Bench in Santosh Kumari (supra) has observed as under:

"26. We may record, at the outset, that normally such a benefit of payment under Section 17B of the ID Act is to be from the date of award which is not only the plain language of the provision, but so recorded in the objects and reasons for enacting this Section. Therefore, when the application is filed by the workman with promptitude after the receipt of the notice of the filing of the petition by the Management, he would be entitled to the benefit of Section 17B of the ID Act from the date of the award. Problem arises when such an application is not filed for years together and by filing a belated application, still the claim is made from the date of the award, which is resisted by the management on the ground that it should be given, if at all, from the date of the application.

27. We are of the considered view that the Single Bench in Food Craft Instt. (supra) gave a balanced interpretation to the aforesaid provision taking into consideration the interest of both the workman as well as the employer. It is the most equitable. What follows from a conjoint reading of Para (xii) and (xvi) enumerated therein that normally, the workman would be paid wages with effect from the date of the award. It should be in those cases where application is filed with promptitude and immediately on notice of writ petition staying the operation of the order of reinstatement or proceedings against such an award. It should be within reasonable period. Thereafter, that would mean that such an application should normally be filed with the filing of the counter affidavit or reply to an application for interim relief and in the case of absence of such counter affidavit or reply, within the reasonable period from the date when workman has appeared himself or through counsel in the writ proceedings. This would be so even when the management has delayed in filing the writ petition challenging the award inasmuch as with such a delay, it cannot deprive the workman under Section 17B from the date of award. Thus, the expression "during the pendency of proceedings before

the High Court” under Section 17B of the ID Act would not mean from the date of filing the writ petition. However, if there is a long or abnormal delay in filing application under Section 17B of the ID Act, we are of the opinion that in such an eventuality, it becomes an obligation of the workman to satisfactorily explain the delay. It would become relevant consideration for deciding as to whether the benefit is to be accorded from the date of application or the award. In case, it is unreasonable and unexplained delay, it would be within the discretion of the writ Court to direct payment of wages from the date of the application. There could be several reasons for adopting this course of action. One of us (Rajiv Sahai Endlaw, J.) had taken the justification by providing following reasons:

“12.3.....

A. Section 17B is in the nature of a subsistence allowance. It is intended to provide to the workman whose reinstatement has been directed by the Industrial Adjudicator, at least minimum wages, during the time that the judicial review of the award of the Industrial Adjudicator is pending consideration before this Court. The payment thereunder is a month by month payment and is not a payment of any lumpsum amount. Further, the said payment is subject to the workman, on affidavit, stating that he is unemployed and/or has been unable to find employment. The employer has a right to rebut the said averment of the workman and if succeeds in rebutting the same, the workman under Section 17B would not be entitled to payment.

B. The payment under Section 17B is not an automatic payment which starts running immediately on institution of proceedings to challenge the award. For the workman to be

entitled to such payment, he is required to file an affidavit. Thus, payment is dependent upon a positive act of the workman. The High Court is not empowered to make the payment till such affidavit has been filed by the workman.

C. Once payment/order requires a positive act of the workman, entitled to such payment of filing in court such affidavit, the ordinary rule of litigation is (as reiterated in Beg Raj Singh v. State of U.P., (2003) 1 SCC 726 : AIR 2003 SC 833) that the right to relief should be decided by reference to the date on which the party approaches the Court. The Supreme Court in Mukund Lal Bhandari v. U.O.I., 1993 Supp (3) SCC 2 : AIR 1993 SC 2127, in relation to the pension of Freedom Fighters also held that the “benefit should flow only from the date of application and not from any date earlier”. Thus but for Section 17B providing for payment during pendency of the writ proceeding (and which has been interpreted as not from date of institution of the writ petition but from the date of the award impugned therein) under general law, an order under Section 17B would have been only from the date of the application under Section 17B.

D. However such benefit given to the workman, of direction/order for payment from a date anterior to the filing of application should not be tilted against the employer by interpreting it to mean that the workman can apply under Section 17B at his whim and fancy and at any time. The workman cannot be permitted to apply under Section 17B when the writ petition matures for hearing and be held entitled to payment for several years together. To allow so, would be inequitable to the employer.

E. In most cases, it is impossible for the employer to verify whether the workman is employed in another establishment or not. It would be more so difficult if the employer is required to verify the employment, if any, for say the last 10 years, as the petitioner herein would be required to, to rebut the affidavit filed by the workman.

F. If the application under Section 17B is made within a reasonable time, the employer can make arrangements for the payment. However, non-filing of the application by the workman can reasonably entitle the employer to believe that the employee is employed in another establishment and will not make any claim under Section 17B. The employer may arrange its financial affairs accordingly. An employer who has acted on the basis of such a representation of the workman cannot after a long period, 10 years as in the present case, be burdened with the liability under Section 17B from a back date which as a lump sum may represent an enormous amount and wreck the employer. Moreover it will provide a bounty rather than subsistence.

G. The Supreme Court in Excel Wear v. U.O.I., (1978) 4 SCC 224 : AIR 1979 SC 25 held that principles of socialism and social justice cannot be pushed to such an extreme so as to ignore completely or to a very large extent the interests of the employer. "" (emphasis supplied)

10. A perusal of the abovementioned judgment shows that the general rule is that the workman is entitled to the benefits under Section 17B of the Act from the date of passing of award unless it is shown that the workman has been indolent and negligent in not pursuing the relief under Section 17B of

the Act and has filed his application under Section 17B of the Act after considerable delay or at his whim and fancy.

11. In view of the above, the law is clear that ordinarily the payment of wages under Section 17B of the Act would be from the date of passing of award and only in cases of undue delay on the part of the workman in approaching the Court, the payment can be directed to be made from the date of filing of application under Section 17B of the Act.

12. As stated earlier, the Apex Court in Dena Bank (supra) has held that the Statement of Objects and Reasons for inserting Section 17B of the Act is to ensure that the workman does not continue to live in penury and await the final outcome of the challenge to the award of reinstatement. Once the award of reinstatement has been passed, the employer should reinstate the workman. The employer cannot be permitted to keep the workman in limbo just by challenging the award and even if the employer fails to get a stay of the award, the employer cannot be permitted to not allow the workman from working and at the same time he also cannot be permitted not to pay wages to the workman as this would go against the purpose of inserting Section 17B of the Act.

13. It is settled law that the words of the Statute must be understood in their natural and ordinary sense according to their grammatical meaning unless such conclusion leads to absurdity unless there is something in the context or in the object of the Statute to suggest to the contrary.

14. The Apex Court in Gurudev Datta VKSSS Maryadit & Ors. v. State of Maharashtra & Ors., (2001) 4 SCC 534, has observed as under:-

“26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their

grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute...”

15. Similarly, the Apex Court in Dr. Jaishri Laxmanrao Patil v. State of Maharashtra, (2021) 8 SCC 1, has observed as under:-

“207. The words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise between the subject of the enactment and the object which the legislature has used. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. [Workmen v. Dimakuchi Tea Estate, 1958 SCR 1156 : AIR 1958 SC 353]

208. It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature [New India Sugar Mills Ltd. v. CST, 1963 Supp (2) SCR 459 : AIR 1963 SC 1207] . However, the object-oriented approach cannot be carried to the

extent of doing violence to the plain language used by rewriting the section or structure words in place of the actual words used by the legislature [CIT v. N.C. Budharaja & Co., 1994 Supp (1) SCC 280] .

209. The logical corollary that flows from the judicial pronouncements and opinion of reputed authors is that the primary rule of construction is literal construction. If there is no ambiguity in the provision which is being construed there is no need to look beyond. Legislative intent which is crucial for understanding the object and purpose of a provision should be gathered from the language. The purpose can be gathered from external sources but any meaning inconsistent with the explicit or implicit language cannot be given.

210. In Aron Saloman v. A. Saloman & Co. Ltd. [Aron Saloman v. A. Saloman & Co. Ltd., 1897 AC 22 (HL)] the House of Lords observed that the intention of legislature is a “slippery phrase”. What the legislature intended can be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. A construction which furthers the purpose or object of an enactment is described as purposive construction. A purposive construction of an enactment is one which gives effect to the legislative purpose by (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose. [Bennion on Statutory Interpretation, 5th Edn., p. 944.] If that is the case, there is no gainsaying that purposive interpretation based on the literal meaning of the enactment must be preferred.”

16. In the facts of the instant case, the award was passed on 31.08.2019 and the employer, i.e. the Municipal Corporation of Delhi, which is an instrumentality of State, has taken more than four-and-a-half-months in filing

the Writ Petition, being W.P.(C) 535/2020. There is no finding by the learned Single Judge as to whether the copy of the Writ Petition was supplied to the Appellant herein/workman or not. The Appellant herein appeared for the first time in the Writ Petition in the month of February, 2020 and has filed an application under Section 17B of the Act in November, 2020, i.e. after a period of nine months. Government is expected to be a fair litigant and cannot be expected to act like a private employer. The employer who himself has filed the Writ Petition after a delay of four months cannot be expected to object to the delay of nine months in filing the application under Section 17B by the Appellant herein. The Division Bench of this Court in Santosh Kumari (supra) has only stated that the workman cannot, after a long delay, which in that case was about 10 years, burden the employer with a liability to pay for the wages.

17. This Court is, therefore, unable to persuade itself with the reason given by the learned Single Judge. Accordingly, the appeal is allowed. The Respondent/employer is directed to pay the amount which is payable to the Appellant herein under Section 17B of the Act from the date of passing of award within a period of six weeks from today, failing which the Respondent/employers would be liable to pay interest @ 6% per month on the outstanding amount.

18. With these observations the LPA is disposed of along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

OCTOBER 17, 2022

Rahul