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W.M.P.No.23337 of 2022
in W.P.No.6511 of 2022

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M.S.Ramesh.J.,

The present application has been filed by the petitioner/workman, claiming either for reinstatement or for payment of the last drawn wages under Section 17B of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act').

2. The workman was dismissed from service through an order dated 15.10.2016. The Approval Petition filed by the respondent/Management under Section 33(2)(b) of the Act, was rejected by the Industrial Tribunal on 29.11.2019. In view of the dismissal, the workman is deemed to have continued in service, without reference to the dismissal order and hence, would be entitled for the last drawn wages under Section 17B of the Act.

3. In paragraph 6 of the affidavit filed in support of the present application, the workman had stated that after the date of his dismissal, he was not gainfully employed at all.



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4. The learned counsel for the respondent/Management submitted that during the pendency of the Approval Petition, the business of JKM Automotive Division at Irungattukottai, was sold to M/s. Hi-Tech Arai Pvt. Ltd., (hereinafter referred to as 'HTAPL'), together with all the employees working therein. It is his submission that, in lieu of the transfer of the business undertaking, the petitioner/workman ought to have joined at HTAPL. With such a submission, the learned counsel stated that since the prayer in the present application is either for reinstatement or for payment of the last drawn wages, he would not be entitled for the last drawn wages since the Management/HTAPL, was ready to reinstate him into service. The learned counsel also submitted that the payment of 17B wages will not arise for a case of rejection of the Approval Petition under Section 33(2)(b) of the Act.

5. Per contra, the learned counsel for the petitioner/workman submitted that the petitioner was neither aware of the Business Transfer Agreement between the Management and HTAPL nor was any notice



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served on him, appraising him of such a transfer, to enable him to join the Transferee Company.

6. The law on the entitlement of dismissed/terminated workman to seek for the last drawn wages under Section 17B of the Act, when the Approval Petition under Section 33(2)(b) of the Act, has been rejected, is well settled. Among the numerous decisions of the Hon'ble Supreme Court, as well as other High Courts, upholding the entitlement of a workman to claim for the last drawn wages under Section 17B of the Act when the Approval Petition of the Management under Section 33(2)(b) of the Act, has been rejected, the Full Bench of the Delhi High Court in the case of '*Delhi Transport Corporation Vs. Jagdish Chander*' reported in '*(2005) 4 LNN 587*', had held that the provisions of Section 17B of the Act, imposed an unambiguous liability on the employer to pay such wages when the Competent Authority rejects an order of Approval Petition under Section 33(2)(b) of the Act.



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7. In the light of the above decision, the submission of the learned counsel for the Management, in this regard, stands rejected and the present application can be maintained.

8. It is not disputed that when the Business Transfer Agreement was entered into between the respondent/Management and HTAPL on 31.12.2018, the petitioner/workman was not put on notice about such a transfer.

9. In the counter-affidavit filed by the Management, it is stated that the Unit along with the workmen, were transferred to HTAPL. A copy of the Business Transfer Agreement dated 31.12.2018, has also been produced before this Court, which does not evidence about the transfer of the workers to the Transferee Company. Even otherwise, this Court is unable to comprehend, as to how a workman could approach the Transferee Company when he is totally at dark on the aspect of the transfer of business, which had taken place between the Management and HTAPL. Thus, the claim of the Management that the Transferee



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Company was all along willing to reinstate the petitioner and therefore, he would not be entitled for wages under Section 17B of the Act, is rejected.

10. The last ground raised by the Management that since they are offering employment to the workman in their Coimbatore Unit, would preclude the workman from claiming the wages under Section 17B of the Act, is concerned, such a submission is not backed by any Legal Authority. A mere offer for reinstatement will not disentitle the workman to claim for 17B wages, which he is otherwise entitled for.

11. What requires to be established by the Management is either the workman was gainfully employed after the dismissal of the Approval Petition or that he was offered employment and the same was refused by him, which also is required to be established through proper evidence before this Court. In the absence of the same, an offer for employment, will not take away the right of the workman to claim 17B wages.



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12. In the light of the above findings, there shall be a direction to the respondent/Management, to forthwith pay the petitioner, the arrears of the last drawn wages under Section 17B of the Act from 17.03.2022 onwards i.e. the from the date of filing of the Writ Petition and continue to pay the same on 5th of every month till the final disposal of the Writ Petition. The arrears of 17B wages shall be paid atleast within a period of two (2) weeks from the date of receipt of a copy of this order.

13. Accordingly, the Writ Miscellaneous Petition stands allowed.

14. Post the Writ Petition 'for recording compliance of WMP order' on 28.06.2023.

28.04.2023

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