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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 88/2020 & CM APPL. 49003/2022, CM APPL. 49004/2022

POST MASTER GENERAL/ SENIOR POST MASTER & ANR
..... Appellants

Through: Ms. Shiva Lakshmi, CGSC
versus

RAMESH KUMAR Respondent
Through: Mr. Rakesh Kumar, Advocate

% Date of Decision: 20th July, 2023

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed impugning the order dated 08th November, 2019 passed by the learned Single Judge, whereby the application being *CM No. 28738/2017* filed on behalf of respondent herein was allowed and he was held entitled to receive the benefits under Section 17B of the Industrial Disputes Act, 1947 (ID Act).
2. It is the case on behalf of appellant that respondent herein was guilty of committing theft of Departmental Cyclostyling Machine and he was caught red handed while he was taking the said machine in cycle rickshaw. He was taken into police custody and later released on bail. After being caught red handed and released on bail, respondent had stopped coming to the duty. His absence from duty was without any prior intimation to the



department. Thus, action was taken against the respondent under CCS (Temporary Services) Rules, 1965 and after due process of law, the services of respondent, who was a part time employee, were terminated.

3. Respondent approached the learned Labour Court, which by its award dated 2nd March, 2016 held that respondent was entitled to reinstatement with 75% of back wages from the date of his termination till his reinstatement.

4. Against the aforesaid award passed by the learned Labour Court, writ petition, *W.P.(C) 3466/2017* came to be filed on behalf of appellant herein. In the said petition, an application under Section 17B of the ID Act, being *CM. No. 28938/2017* was filed on behalf of respondent. By the impugned order dated 08th November, 2019, the learned Single Judge allowed the said application and held respondent herein as entitled to receive last drawn wages/minimum wages, whichever was higher, as benefit under Section 17B of the ID Act.

5. Learned standing counsel for appellant has contended that respondent was engaged as a part-time chowkidar and was paid wages for working for five hours per day. No temporary status was granted to respondent by appellant department. It is contended that respondent is governed by Central Civil Services (Temporary Service) Rules, 1965 and not the ID Act. Thus, award passed by the learned Labour Court in favour of respondent suffers from jurisdictional error, as the matter of termination of respondent from service was to be adjudicated by the learned Central Administrative Tribunal (CAT) under Section 14 of the Administrative Tribunals Act, 1985. It is, therefore, contended that no relief under Section 17-B of the ID Act could have been granted in favour of respondent.



6. It is further contended on behalf of appellant that the issue whether a person holding a 'Civil Post' is eligible to seek relief under the ID Act has not been adjudicated. It is submitted that the said issue came before Hon'ble Supreme Court in the case of ***Umesh Korga Bhandari Vs. Mahanagar Telephone Nigam Limited and Another, (2005) 13 SCC 691***, wherein the said issue has been referred for hearing by a three Judge Bench. It is submitted that the said matter is still pending and the issue is yet to be decided by Hon'ble Supreme Court.

7. It is further submitted that High Court of Karnataka dealt with a similar issue as to whether a person holding a 'Civil Post' could seek relief under ID Act, in the case of ***Chief Post Master General Vs. Sri P. Narayana Swamy, W.P. No. 10072 of 2007*** decided on 19.02.2013. The said court held that the impugned order passed by the Labour Court in the said case shall not be executed until disposal of the case referred by Supreme Court, as aforesaid. Thus, it is contended that in the present case also, order passed by the learned Single Judge may be set aside, as the application under Section 17B of ID Act could not have been entertained till Hon'ble Supreme Court decides the issue in the case of ***Umesh Korga (Supra)***.

8. It is further submitted that the respondent is claiming litigation expenses at the same time along with benefit under Section 17B of the ID Act.

9. On the other hand, learned counsel appearing for respondent submits that respondent was not a part-time chowkidar, as contended on behalf of appellant. Respondent was a regular chowkidar working on continuous and permanent basis.



10. It is further submitted that respondent was not arrested by the police for the alleged crime of theft. No F.I.R. has been lodged against the respondent and no proceedings were ever initiated against the respondent in respect of any theft. It is submitted that the termination of respondent was illegal and unjustified and was in violation of the provisions of the ID Act. The respondent was terminated without following the principles of natural justice.

11. Learned counsel for respondent further submits that he shall not press the payment of litigation expenses in case payments under Section 17B of ID Act are released to the respondent.

12. We have heard learned counsels for the parties.

13. Perusal of the record shows that respondent herein had filed an application before the learned Single Judge under Section 17B of ID Act, wherein it was categorically submitted that respondent had not been able to get any suitable employment despite best efforts. Learned Single Judge has given a clear finding that appellant herein has not been able to point out that the averments of respondent that he was not gainfully employed, are incorrect. Thus, considering the affidavit filed on behalf of respondent herein to the effect that he has continued to remain unemployed, it was held that respondent was entitled to receive the benefits under Section 17B of the ID Act. The order passed by the learned Single Judge in this regard, cannot be faulted with.

14. In the present case, there is an award passed by the learned Labour Court against appellant and in favour of respondent herein directing his reinstatement. The said award has been challenged by appellant herein before learned Single Judge of this Court. Respondent by way of an affidavit



has categorically deposed that he continues to remain unemployed despite best efforts. Appellant has not been able to point out that the said averment on behalf of respondent that he is not gainfully employed, is incorrect in any manner. Hence, it is seen that all the pre-requisites for granting payments under Section 17B of the ID Act stand satisfied.

15. With respect to the conditions required to be satisfied for grant of relief under Section 17B of ID Act, Hon'ble Supreme Court in the case of ***Municipal Corporation of Delhi Vs. Santosh Kumari and Another, 2012 SCC OnLine Del 4390*** has, thus, held as follows:

“21. Further, the statute requires satisfaction of the following conditions:

(i) An award by a Labour Court, Tribunal or National Tribunal directing reinstatement of a workman is assailed in proceedings in a High Court or the Supreme Court;

(ii) During the pendency of such proceedings, employer is required to pay full wages to the workman;

(iii) The wages stipulated under Section 17B are full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any Rule;

(iv) Such wages would be admissible only if the workman had not be employed in any establishment during such period and an affidavit had been filed to such effect.”

16. Once all the requisite conditions as stipulated under Section 17B of ID Act are satisfied, then the court has no jurisdiction to direct non-compliance with the mandate of the said section. Thus, in the case of **Ch.**



Saraiah Vs. Executive Engineer, Panchayat Raj Department and Another, (1999) 9 SCC 229, Supreme Court has held as follows:

“3. Having examined the provisions of Section 17-B of the Industrial Disputes Act, we are of the considered view that the court has no jurisdiction to direct non-compliance with the same when the condition precedent for passing an order in terms of Section 17-B of the Act is satisfied, and this being the legislative mandate, the Division Bench of the High Court committed serious error in interfering with the direction of the learned Single Judge. We accordingly set aside the impugned order passed by the Division Bench and direct that the order of the learned Single Judge requiring compliance with Section 17-B of the Industrial Disputes Act shall be complied with by the employer. This appeal is accordingly allowed. There shall be no order as to costs.”

17. As regards the issue raised on behalf of appellant that respondent was a part-time employee governed by the Central Civil Services (Temporary Service) Rules, 1965 and thus, the learned Labour Court had no jurisdiction to pass the impugned award, the same is pending consideration before the learned Single Judge. There is a categorical averment on behalf of respondent that he was a regular employee appointed against a sanctioned post of permanent nature. Thus, rival contentions of the parties would have to be adjudicated by the learned Single Judge. At the time of dealing with an application under Section 17B of the ID Act, the court is required to consider only the requirements as set out in the said section. The court cannot go into the merits of the case while considering the entitlement for grant of relief under Section 17B of the ID Act. Thus, a Co-ordinate Bench of this Court in the case of ***North Delhi Municipal Corporation Vs. Bal***



Kishan and Another, 2021 SCC OnLine Del 5543 has held as follows:

“14.

(ix) The court while considering an application under Section 17-B of the ID Act cannot go into the merits of the case, the court can only consider whether the requirements mentioned in Section 17-B 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: entitled Anil Jain v. Jagdish Chander [Anil Jain v. Jagdish Chander, 1999 SCC OnLine Del 496]).

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18. Further, the case of ***Sri P. Narayana Swamy (Supra)*** as relied on behalf of appellant, does not deal with the issue of payments under Section 17B of ID Act and hence, does not assist appellant in any manner.

19. In view of the aforesaid detailed discussion, no merit is found in the present appeal. The same is accordingly dismissed, along with the pending applications.

MINI PUSHKARNA, J

MANMOHAN, J

JULY 20, 2023

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