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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 30.01.2024

+ LPA 75/2024

STATE BANK OF INDIA

..... Appellant

Through: Mr. Rajiv Kapur, Mr. Akshit Kapur
and Mr. Aditya Saxena, Advocates.

versus

HARISH CHANDER

..... Respondent

Through:

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)****CM APPL. 5150/2024 -Ex.**

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 5151/2024 -Delay 12 days.

3. This is an application filed by the appellant seeking condonation of 12 days delay in filing the Letters Patent Appeal.
4. The application is, for the reasons stated therein, allowed and the delay of 12 days in filing the appeal is condoned.
5. The application stands disposed of.

LPA 75/2024 and CM APPL. 5149/2024 -Stay.

6. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 11.09.2023 passed by the learned Single



Judge in W.P.(C) No. 14999/2022 in so far as it allows the application filed by the respondent under Section 17 B of the Industrial Disputes Act (the ID Act) being C.M. 51613/2022. While allowing the respondent's aforesaid application, the learned Single Judge has directed the appellant to pay him last drawn wages from the date of filing of the application, i.e., 07.11.2022. The appellant also assails the subsequent order dated 12.12.2023 where under its application being CM No.56263/2023, seeking modification of the order dated 11.09.2023, has been rejected.

7. Before dealing with the submissions of the learned counsel for the appellant, the brief factual matrix, as is necessary for adjudication of the present appeal, may be noted.

8. The respondent, a permanent employee of the appellant bank, while working as a cashier in the Hamitpuri Branch of the bank was charged with allegations of having committed serious lapses in allowing withdrawal of money from bank accounts of customers. Accordingly, he was served with a show cause notice and thereafter with a charge sheet dated 15.04.2013. Upon the respondent denying the charges, a departmental enquiry was held against him, wherein all the charges against him were proved. Based on the report of the enquiry officer, the penalty of removal from service was imposed on the respondent vide the disciplinary authority's order dated 28.02.2014.

9. Being aggrieved, the respondent raised an industrial dispute, which culminated in an award being passed in his favour. Vide this award dated 17.09.2022, the respondent's termination was held to be



illegal and consequently the appellant was directed to reinstate him in service with all consequential benefits. This award has been assailed by the appellant by way of W.P.(C) No. 14999/2022, which writ petition came up before the learned Single Judge on 31.10.2022, when the Court, while issuing notice in the same, stayed the operation of the award.

10. Upon the award being stayed, the respondent on 07.11.2022, moved an application under Section 17 B of the ID Act. In his application, which was supported by an affidavit, the respondent specifically stated that he was unemployed. Despite opportunity, the appellant neither filed any reply to the application nor was able to otherwise demonstrate before the learned Single Judge that the respondent was gainfully employed. In these circumstances, the learned Single Judge, vide its impugned order dated 11.09.2023, allowed the respondent's application by directing the appellant to pay to the respondent within six weeks, arrears of wages inclusive of maintenance allowance w.e.f., 07.11.2022, i.e., the date on which the application was filed. The appellant was further directed to continue to pay the said amount on a month to month basis.

11. The appellant then preferred an application seeking modification of the order dated 11.09.2023. This application was listed before the learned Single Judge on 12.12.2023, on which date, the respondent appeared and undertook not to claim any superannuation benefits during the pendency of the writ petition. By taking note of this undertaking given by the respondent, the learned Single Judge rejected the modification application, which order has



also been assailed in the present appeal.

12. In support of his appeal, learned counsel for the appellant has made two submissions. The first and foremost being that after his termination from service, the respondent will receive a huge amount towards his superannuation benefits and therefore it was not a case where he was facing any financial hardship. His contention, thus, being that the benefit under Section 17 B of the ID Act can be granted only where after examining the factual matrix of a case, the Court finds that the workman would be left without any source of livelihood.

13. He next submits that an application under section 17 B of the ID Act cannot be allowed unless the workman files an affidavit specifically stating therein that he is unemployed. He submits that in the present case, the respondent had not filed any specific affidavit in this regard and had instead made this averment only in his application which was supported by an affidavit in general terms. He, therefore, contends that this affidavit could not be treated to be compliant of Section 17 B of the ID Act. By placing on reliance on a decision of the Apex Court in *Saregama India Ltd. vs. Next Radio Ltd. & Ors. (2022) 1 SCC 701*, he contends that the Court cannot substitute specific provisions of the statute which must be strictly followed.

14. Having considered the submissions of learned counsel for the appellant, and perused the record, we find absolutely no merit in the present appeal.

15. As noted hereinabove the first plea of the appellant is that the respondent would be entitled to receive his superannuation benefits



and therefore he cannot be said to be facing any grave financial hardship. It has been contended that unless it is a case of grave financial hardship, an application under Section 17 B cannot be allowed. Upon a plain reading of Section 17 B which reads as under, we are of the considered view that this submission is contrary to the plain language of Section 17-B, which enjoins the Courts to grant relief under Section 17-B upon an award of reinstatement being challenged and stayed, subject to the respondent stating on affidavit that he is unemployed.

“[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.]”

16. From the aforesaid, we have no hesitation in holding that if the aforesaid plea of the appellant were to be accepted and it were to be held that in a case where a workman is entitled to receive a lumpsum amount on account of his termination, he cannot claim benefit under Section 17 B, the same would amount to re-writing the statute. This interpretation being sought to be given by the appellant would defeat



the very purpose of Section 17 B of the ID Act, which is meant to ensure that a workman receives this amount in a case where an award of reinstatement is challenged by the management. We may also note that respondent had made a specific statement before the learned Single Judge on 12.12.2023 that he will not claim his superannuation benefits during the pendency of the writ petition and therefore, it is evident that he is presently not receiving this lumpsum amount, which amount, the appellant claims, he is entitled to receive after his termination.

17. Now coming to the appellant's second plea that since the respondent did not file a specific affidavit stating that he was unemployed, his application was liable to be rejected. Even this plea, in our opinion, is without any merit. Once the respondent had filed a specific affidavit endorsing all the averments made in the application, the conditions of Section 17 B of the ID Act would, in our view, stand satisfied. The intent of directing the workman to file an affidavit that he is unemployed is to ensure that he takes responsibility for his statement before the Court that he is unemployed. It is trite law that provisions of a beneficial statute, which in the present case, are meant safeguard the interest of the workman, cannot be read in such a hyper-technical manner as is being done by the appellant. As long as the respondent's assertion that he is unemployed is supported by an affidavit, there is no reason to disbelieve his stand that he is unemployed. In our view, this affidavit would not only be in compliance of Section 17 B but would also be sufficient to protect the interest of the appellant. We may also note that despite opportunity,



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the appellant was not able to place anything on record to show that the respondent was gainfully employed and therefore, find no merit in any of the submissions of the appellant.

18. The appeal, along with all pending applications, is accordingly dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

JANUARY 30, 2024/ib