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

% **Decision delivered on: 22.08.2024**

+ **LPA 697/2022**

RAJ PAL AND ORS

.....Appellants

Through: Ms. L. Gangmei and Ms. Megha,
Advocates

versus

MUNICIPAL CORPORATION OF DELHIRespondent

Through: Mr. Akshay Choudhary, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. By way of this appeal under Clause X of the Letters Patent, the appellants have sought the following relief:

a. Set aside the order dated 13.09.2022 in W.P.(C) No. 2467/ 2020 and grant full wages last drawn i.e. Rs.46,089/- inclusive of maintenance allowance or minimum wages as revised from time to time under the Minimum Wages Act whichever is higher w.e.f. 01.05.2020 till the final disposal of present writ petition under Section 17B of the Industrial Disputes Act, 1947"

2. The appellants/workmen were posted at Ward No. 89, Horticulture Department, Karampura, Rohini Zone, M.C.D. as Beldar/ Mali for indefinite period from the initial date of their joining into the



employment and as such they were deemed to have been employed on permanent basis. But, they were being treated as daily rated/ casual/ muster roll worker and were being paid wages as fixed and revised from time to time under the Minimum Wages Act by the appropriate government while their counterparts doing the identical work and the work of the same value, but being treated as regular employees were being paid their salaries in proper pay scale of 750-940 with usual allowances admissible under the rules. Their regular counterparts were also enjoying other benefits like uniform, E.L., C.L., Gazetted/ Festival/ Restricted Holidays and Medical Leave etc. which have been completely denied to the appellants/workmen. They had unblemished and uninterrupted record to their credit.

3. Learned counsel appearing on behalf of the appellants submitted that since the respondent/Management was not taking any step towards the regularization of the services of the appellants/workmen, therefore the appellants/workmen raised an industrial dispute regarding regularization of their services from the initial date of joining into the employment and payment of remuneration at par with their counterparts who were doing the identical work and the work of same value on the principle of “Equal Pay for Equal Work”.

4. Learned counsel for the appellants further submitted that during the pendency of the above dispute, the respondent/Management terminated the services of the appellants/workmen w.e.f. 01.04.1995 by refusal of duties. The said termination was a retrenchment contrary to law and in violation of Sections 25F, 25G & 25H of the Industrial



Disputes Act, 1947 (hereinafter referred as "Act"). Accordingly, the appellants/workmen filed their claims before the learned Industrial Tribunal, which, vide Award dated 04.09.2002, dismissed the claims of the appellants/workmen. The matter was then carried in a Writ Petition before the learned Single Judge of this Court in W.P.(C) No. 5563/2003 titled "*Raj Pal and Ors. vs. Municipal Corporation of Delhi and Anr.*" wherein the learned Single Judge, vide judgement dated 09.03.2007, had directed reinstatement of the appellants/workmen with consequential benefits. The respondent/Management appealed the said order of the Hon'ble Single Judge in LPA No. 1162/ 2007 wherein the learned Division Bench of this Court set aside the order of the learned Single Judge and remanded the matter back to the learned Industrial Tribunal.

5. Learned counsel for the appellants also submitted that post the said remand, the matter was again taken up by the learned Industrial Tribunal. Fresh pleadings were filed and evidence was adduced by the appellants/workmen. The industrial dispute i.e. I.D. No. 693/ 2016 (Old No. 233/ 1996) was decided by the Award dated 30.07.2018 and in the said Award, the learned Industrial Tribunal was pleased to grant the relief of reinstatement in service along with continuity of the service and 50% of the backwages to the appellants/workmen. Further, the learned Tribunal was pleased to direct the respondent/Management to regularize the services of the appellants/workmen as Mali/ Beldar in accordance with its policy.

6. However, when the respondent/Management failed to implement the said Award, the appellants recovered their dues under the Award upto



30.04.2020 by initiating proceedings under Section 33C(1) of the Industrial Disputes Act, 1947. Learned counsel for the appellants further submitted that the respondent/Management had participated in the said recovery proceedings and subsequently application under Section 33C(1) of the Industrial Disputes Act, 1947 for recovery of dues under the award for the period from 01.05.2020 to 31.05.2021 was filed and the same was pending for adjudication. Thereafter, the appellants/workmen submitted several joining reports and also demanded implementation of Award dated 30.07.2018.

7. However, the respondent/Management challenged the aforesaid Award dated 30.07.2018 in writ petition W.P. (C) No. 2467 of 2020 along with CM APPL 8616/2020 seeking interim relief by way of stay of the operation of the impugned award dated 30.07.2018. It is also submitted that the said writ petition was filed after a delay and the respondent/Management was given an opportunity to explain the delay by way of an application vide order dated 03.03.2020.

8. Thereafter, an application being CM APPL 1412/ 2021 was preferred by the respondent/Management seeking condonation of delay in filing the writ petition and on service of the application, the appellants filed a reply to the same. It is pertinent to mention that the said application is still pending. Vide order dated 20.09.2021, notice was issued in the writ petition W.P.(C) 2467/ 2020 and operation of the award dated 30.07.2018 was stayed. Thereafter, the appellants/workmen filed their reply to the said writ petition.



9. Thereafter, an application being CM APPL. 3419/ 2022 under section 17B of the Industrial Disputes Act, 1947 was preferred by the appellants/workmen for payment of full wages last drawn by the them inclusive of maintenance allowance or minimum wages as revised from time to time under the Minimum Wages Act whichever is higher w.e.f. 01.05.2020 till final disposal of the writ petition preferred by the respondent/Management.

10. After filing of the reply by the respondent/Management, the said application was dismissed vide order dated 13.09.2022. Hence, the present appeal.

11. It is not in dispute that the learned Industrial Tribunal was pleased to grant the relief of reinstatement in service along with continuity of the service and 50% of the backwages to be paid in favour of the appellants/workmen. Further, the learned Industrial Tribunal was pleased to direct the respondent/Management to regularize the services of the appellants/workmen as Mali/ Beldar. However, the impugned order places reliance on the observations in order dated 20.09.2021 which has been made at the time of issuing notice in the writ petition without considering the objections of the appellants/workmen and is a *prima facie* view on merits.

12. Learned counsel appearing on behalf of the appellants submits that the considerations for grant of wages under section 17B of the Industrial Disputes Act are completely different and the Court cannot be influenced by the merits of the case if the workman fulfils the requisites for grant of the same. Despite holding that there is "no quarrel with the proposition



that at the stage of Section 17B, the Court generally has to see only the conditions as enumerated in the provision itself, however, the impugned order goes beyond the scope of Section 17B to deny the subsistence allowance to the appellants/workmen.

13. We have pursued the impugned order passed in the application filed by the appellants/workmen under Section 17(B) of the Industrial Disputes Act, 1947 which reveals that the Learned Single Judge has observed that appellants/workmen worked between 60-89 days and recovered an amount of Rs. 1.4 crores from the respondent/Management without considering that the writ petition is barred by delay and laches and even the delay has not been condoned by the learned Single Judge. The dues under the Award were recovered by the procedure established by law and the respondent/Management even participated in the said recovery proceeding.

14. The learned Single Judge has quoted that since the appellants/workmen had received an amount of Rs. 1.4 crores from the respondent/Corporation, then they are not entitled for the relief sought under Section 17B of the Industrial Disputes Act, 1947. The learned Single Judge has overlooked the fact that the said amount was the backwages of 50% of the workmen but when the workmen are in service, how the workmen will survive without getting the relief sought under Section 17B of the Industrial Disputes Act 1947.

15. Learned counsel for the respondent/Management has relied upon the case titled *Trends vs Lellamma Thomsan & Anr*, (2023) SCC Online Del 7878 and the Court held thus:



“12. This Court is conscious of various legal pronouncements relating to inflexible nature of section 17B application and that the normal course is to direct grant relief under this provision. It is also conscious of the fact that writ petition is pending adjudication before this Court and arguments on merits should not be considered in determination under section 17B of the Act. However, having heard the parties and their submissions as noted above, this Court is not convinced that there is a serious financial hardship to the respondent/worker for which the petitioner ought to be continuing her wages. There is also no option of reinstatement, since the petitioner has already closed down the unit. The fact that a communication was addressed to the bank by the petitioner entity stating that they had closed down in May, 2014 has also informed the opinion of this Court. Relief under section 17B of the Act is in principle premised upon the entity which was functioning at the time award was passed. In a situation as contemplated in Iron Rolling Mills (supra) where an entity had closed 4 years after passing of the award of reinstatement, it was held that the relief under section 17B would be granted.

13. The proviso to section 17B of the Act gives allowance for satisfaction of the court to not award relief under section 17B in case it is found that the worker had been employed or receiving adequate remuneration. This obviously is premised upon a basic principle that there was no serious financial hardship faced by the respondent/worker.

14. In the opinion of this Court, therefore, this proviso cannot be confined in a straitjacket involving only a narrow assessment of ‘employment’, but must also account for facts presented by the management, of circumstances that belie a plea of serious financial hardship by the worker. In this case, the assertion itself that she was staying on rent is completely falsified by the document of house ownership i.e. conveyance deed. The existence of this deed was not refuted by the learned counsel for the respondent/worker.”

16. Learned counsel for the respondent/management submits that since there is no financial hardship to the appellants/workmen, therefore, they are not entitled to the relief sought under Section 17B of the Industrial



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Disputes Act and that the application was filed after delay of two years.

17. Admittedly, the abovementioned case of *Trends* (supra) as relied upon by counsel for the respondent/Management is not applicable to the present case.

18. In view of the above, the impugned order dated 13.09.2022 passed in W.P.(C) No. 2467/ 2020 is set aside and the respondent/Management is directed to release subsistence allowance at the rate of last pay drawn or minimum wages as revised from time to time under the Minimum Wages Act whichever is higher from the date of application being C.M. APPL. 3419/2022 i.e., 18.01.2022.

19. Accordingly, the present appeal stands disposed of with the aforesaid directions. The order passed by this Court shall be complied within four weeks from the date of receipt of this order.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 22, 2024/as/riya