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

+ RFA 449/2015

DELHI TRANSPORT CORPORATIONAppellant

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Aliza Alam, Advs.

versus

JAI BHAGWANRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **19.12.2024**

1. The instant appeal has arisen out of a judgment and decree dated 11.02.2015, passed in CS No. 286/2012, by the Trial Court, whereby, the suit filed by the appellant/ plaintiff has been dismissed for recovery of the wages paid to the respondent/ defendant.
2. Heard Mrs. Avnish Ahlawat, learned standing counsel assisted by Ms. Aliza Alam, learned counsel for the appellant.
3. None appears for the respondent.
4. The facts of the case would indicate that the respondent was working with the appellant Corporation as a Conductor. During his tenure, he was charge-sheeted for availing 80 days of unauthorized leaves and consequently, his services were terminated on 21.04.1993.
5. An application seeking approval was filed by the appellant/plaintiff under Section 33(2)(b) of the Industrial Disputes Act, 1947 (I. D. Act), which was allowed by the Court on 19.05.2000. The respondent/defendant,



thereafter, raised an industrial dispute bearing I.D. No. 94/2001, and by an award dated 07.02.2003, the respondent herein was directed to be reinstated from the date of removal along with full back wages.

6. The Order passed by the Court was challenged by the appellant by preferring a writ petition bearing no. W.P. (C) 17138/2004.

7. In the meantime, an execution petition for the implementation of the award dated 07.02.2003 was filed before the labor commissioner by the respondent/defendant and the concerned Court *vide* order dated 03.11.2004 directed the appellant/plaintiff for the payment of a sum of Rs. 5,90,074/- through bank attachment to the respondent/defendant. It is in accordance with the said proceedings that the amount was released in favour of the respondent herein.

8. The aforesaid writ petition bearing no. W.P. (C) 17138/2004, however, came to be decided in favour of the appellant/petitioner *vide* order dated 09.05.2011 setting aside the order dated 07.02.2003. The Order dated 09.05.2011 was further modified on 19.12.2011 to the extent that the respondent/defendant was entitled to payment at last drawn wages and not at the rate of minimum wages and the appellant/plaintiff is entitled to adjust the amount payable u/s 17 B of the ID Act. In the said terms, the Court remanded the matter back to the Industrial Tribunal for fresh disposal.

9. During the pendency of the writ petition, in compliance with provisions under Section 17 B of the I.D. Act, wages were paid to the respondent/defendant with an undertaking that any excess amount be refunded to the appellant/plaintiff. It is the case of the appellant/plaintiff that despite serving a legal notice for recovery of a sum of Rs. 2,45,408/- alongwith an interest @ 12% p.a. upon the respondent/defendant, there was



no compliance on the part of the respondent/defendant.

10. It is, thereafter, a suit for recovery of Rs. 4,90,808/- along with interest at the rate of 12% per annum was filed by the appellant/plaintiff.

11. The Trial Court *vide* impugned judgment and decree dated 11.02.2015 has dismissed the civil suit while rendering the following pertinent findings:-

“8. Issues no. 2 and 3 are taken up together as they involve common discussions and are connected with each other. Onus to prove the issue no.2 and 3 was upon the plaintiff. The main controversy involved in the present suit is with regard to the amount received by the defendant from the plaintiff in terms of the order passed by the Hon'ble High Court of Delhi. The defendant was removed from service in terms of order dated 21.04.1993. The plaintiff moved an application u/s 33 of Industrial Dispute Act, which was allowed on 19.05.2000. In the meantime, the defendant also filed an Industrial Dispute Case vide ID no.94/2001 and vide order dated 07.02.2003, the defendant was directed to be re-instated with full back wages. The said order dated 07.02.2003 was challenged by the plaintiff through writ petition no. 17138/2004 and award was set aside and matter is remanded back to the Industrial Adjudicator for deciding afresh. The defendant has received a sum of Rs.5,90,074/- through Bank attachment dated 30.11.2004 for seeking implementation of the award dated 07.02.2003 passed in favour of defendant. The writ petition no.17138/2004 was decided on 09.05.2011. In the above said writ petition no.17138/2004 Hon'ble High Court of Delhi has issued direction on 09.12.2011 for payment of back wages at the rate of last drawn wages to the defendant. It is alleged that the defendant was entitled for last drawn wages from the date of award till the Hon'ble High Court remanded back the case, which comes to Rs.3,44,666/- whereas the defendant has received the amount of Rs.5,90,074/- through bank attachment in compliance of the award which has been set aside by the Hon'ble High Court of Delhi. The defendant has received excess amount of Rs.2,45,408/-

9. It is argued by the counsel for the plaintiff that the defendant has received the excess amount of Rs.2,45,408/-. It is argued by the counsel for the plaintiff that the defendant has received this excess amount for which he was not entitled and the said amount is to be refunded by the defendant alongwith interest @12 %p.a. w.e.f. 30.11.2004 to 30.06.2012. Per contra, Ld. Counsel for the defendant has argued that the impugned award has not been set aside but the matter is remanded back to the Industrial adjudicator for adjudication afresh in accordance with the law. Therefore, the matter is subjudice before the Industrial subjudicator. The defendant will be entitled to more amount than paid by the plaintiff, in case, the



award is passed in favour of the defendant. It is further argued that the plaintiff is not entitled to recover a single penny in terms of law laid down by the Hon'ble High Court of Delhi in "DTC vs. Ramesh Chander" 179 DLT 263.

10. Admittedly, in terms of the directions issued by the Hon'ble High Court of Delhi in writ petition no.17138/2004 on the application moved by the defendant u/s 17-B of the Industrial Disputes Act, the plaintiff is to pay to the workmen/defendant arrears of Section 17-B at the last drawn wages or minimum wages, whichever is higher from the date of award but these directions were modified on 09.12.2011 while reviewing order dated 09.05.2011 and the defendant was held entitled to his last drawn wages only. As per the case of the plaintiff, in terms of Ex. PW 1/8, the defendant is entitled to Rs.3,44,666/- as wages whereas the payment has been made to the defendant through bank attachment amounting to Rs.5,90,074/- as per minimum wages, to which the defendant was not entitled.

11. The calculations (Ex.PW 1/A) depicts that the plaintiff has drawn / more wages than he was entitled for. Therefore, the defendant has received the amount more than his last drawn wages to the which he was entitled in terms of directions issued by the Hon'ble High Court of Delhi. But, it may be noted that it is mandated by the Hon'ble High Court of Delhi in "DTC vs. Ramesh Chandra" (Supra) that there is no requirement by the workmen/defendant to refund the amount received by him towards wages and other benefits. Therefore, from the above discussions, I am of the opinion that the plaintiff has proved that the defendant has received excels amount of Rs, 2,45,408/- in excess of his last drawn wages to which he was entitled for. But in view of the law laid down in the above judgment, the plaintiff is not entitled to recover such amount. Therefore, the issues no. 2 and 3 are decided against the plaintiff and in favour of the defendant."

12. The Court acknowledges the decision of the Supreme Court in the case of **Kaivalyadham Employees Association vs. Kaivalyadham S.M.Y.M. Samity**¹, wherein, it was held that the purpose of Section 17B, as consistently maintained by the Court, is to provide the workman with the means to sustain himself and his family members during the pendency of legal proceedings preferred by the employer before the High Court or the Supreme Court.

13. In the instant case, it is seen that the wages were paid in compliance

¹ 2003 CRI LJ 161



with the provisions under Section 17B of the I.D. Act, and in any case, even on success of the main controversy, the employer would not be entitled to recovery of the said wages.

14. In view of the aforesaid, this Court does not find any reason to interfere with the impugned judgment and decree passed by the Trial Court, accordingly, the instant appeal fails and the same is hereby dismissed.

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 19, 2024

aks/dp