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

\+ RFA 452/2015

DELHI TRANSPORT CORPORATION .....Appellant

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

versus

CHANGGA MAL .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAUROV

O R D E R

% **19.12.2024**

1. The instant appeal has arisen out of a judgment and decree dated 11.02.2015, passed in CS No. 406/2012, 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 and during his tenure, when he was on duty on a bus, some irregularities were found which led to the termination of his services on 08.10.1993.

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 dismissed by the Court on 23.01.2003.

6. The appellant herein, filed a writ petition bearing no. W.P.(C) 9340/2004 which stood allowed *vide* order dated 12.03.2012, and the order dated 23.01.2003 was set aside.

7. In the meantime, the respondent/defendant preferred an application under Section 17 B of the I.D Act which was decided in his favour directing the appellant/plaintiff to allow the arrears of last drawn wages or the minimum wages whichever may be higher from the date of the order dated 20.01.2003 till April, 2010. Compliance was made by the appellant/plaintiff and the respondent received a sum of Rs. 5,74,419/- along with the sum of Rs. 4,18,975/- through bank attachment as per directions of this Court in the writ petition *vide* order dated 01.04.2011.

8. It is, thereafter, that a suit for recovery of was filed by the appellant herein for recovery of the wages which was paid during the pendency of the aforesaid writ petition in compliance with Section 17B of the I.D. Act.

9. The learned Trial Court, thereafter, in paragraph nos. 8 and 9 has held as under:-

> *"8. Issue no. 2 and 3 are interse connected and I propose to take up these issues together. Onus to prove the issue no.2 and 3 was upon the plaintiff. As per the admitted case, defendant was removed from service in terms of order dated 28.10.1993 and the application u/s 33 (2) (b) under the Industrial Dispute Act seeking approval of the defendant was dismissed on 20.01.2003 by Presiding Officer Industrial Disputes Tribunal-II. In the meantime, plaintiff filed writ petition no.9340/2004 and in that petition an application u/s 17-B of the Industrial Disputes Act which was filed by the defendant and the direction was issued that the defendant was to be paid arrears of last drawn wages/minimum wages, whichever may be higher w.e.f 20.01.2003 to April, 2010. The defendant has been directed that in the event the plaintiff succeeded, the defendant would pay the excess amount to the plaintiff over and above the last drawn wages. Ultimately, the writ petition no.9340 was allowed and the impugned order dated 20.01.2003 was set aside. Defendant received the amount of Rs.5,74,419/- through attachment. The defendant has received an amomit of Rs.4,18,975/- towards minimum wages w.e.f. 20.01.2003 to July, 2010 in compliance of the order passed in CWP co. 9340/2004. The defendant has received an amount of Rs.4,18,975/- towards minimum*

wages w.e.f. 20.01.2003 to July, 2010. Therefore, the defendant was entitled for an amount of Rs.2,53,716/- and he received an extra amount of Rs.1,65,269/-.

9. It may be noted that as per the direction issued on the application u/s 17-B of the Industrial Disputes Act, the plaintiff was directed to pay to the defendant arrears of last drawn wages/ minimum wages, which may be higher. As per calculation (Ex. PW 1/8) minimum wages of the defendant for the period in question are Rs.4,18,975/- and last drawn wages are Rs. 2,53,716/-. But in terms of the direction, issued by the Hon'ble Delhi High Court, the defendant was held entitled for last drawn wages/minimum wages whichever is higher. As per this calculation placed on record, minimum wages of the defendant are Rs.4,18,975/- and plaintiff was directed to pay minimum wages/last drawn wages whichever is higher. Therefore, the defendant was entitled for higher wages/minimum wages. The plaintiff has not paid any extra amount as arrears of back wages of the defendant as per calculation placed on record by the plaintiff So far as the amount of Rs. 5,74,419/- is concerned, that amount was received by the defendant as arrear of his salary from the year 1993 till 2003 through attachment after dismissal of the application seeking approval moved by the plaintiff. The said amount could not be recovered by the plaintiff as per the mandate of the Hon'ble High Court of Delhi in "DTC vs. Ramesh Chandra" 179 (2011) DLT 263 in which it has been observed 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 failed to prove that the defendant has received any excess amount towards his last drawn/minimum wages to which he was entitled for. Therefore, the issues no.2 and 3 are decided against the plaintiff and in favour of the defendant.

9. The onus to prove issue no.l was on the plaintiff. Plaintiff has stated that the amount was paid in compliance of order passed during legal proceedings and the suit has been filed after conclusion of these proceedings and the entitlement of the plaintiff for claiming the suit amount involved in the present suit arose thereafter. Therefore, the suit filed by the plaintiff is within the prescribed period of limitation. Hence, the issue no. 1 is decided in favour of the plaintiff and against the defendant."

10. The Supreme Court has held that the wages under Section 17B of the I.D. Act are not recoverable. It was held by the Supreme Court in the case of ***Kaivalyadham Employees Association vs. Kaivalyadham S.M.Y.M. Samity*** [1], that the purpose of Section 17B, as consistently maintained by the

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[1] 2003 CRI LJ 161

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. The pertinent findings of the case read as below:-

> *"The provisions of Section 17B stipulates that when an Award of reinstatement of a workman is challenged by the employer before the High Court or the Supreme Court and the operation of the same is stayed, the employer shall be liable to pay the workman, during the period of pendency of such proceedings, full wages last drawn by him. It also indicates that the same would be subject to the workman filing an affidavit to satisfy the Court that he had not been gainfully employed during the said period. The said question has been set at rest by the learned Single Judge in favour of the workmen.*
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> *Section 17B provides in unambiguous terms that if an award for reinstatement of a workman is stayed at the instance of the employer, either by the High Court or the Supreme Court, the employer will be liable to pay to the workman during the pendency of the proceedings before the High Court or the Supreme Court full wages as last drawn by him, including any maintenance allowance admissible to him under any Rule, if the workman had not been gainfully employed elsewhere during the said period."*

11. In the instant case, it is seen that the wages were paid in compliance with the provisions under Section 17B of the I.D. Act, and in any case, on the success of the main controversy, the employer would not be entitled to recovery of the said wages.

12. 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